

2004 - Judiciary Rules Senate Pending Rule (Yellow)

ADMINISTRATIVE RULES REVIEW

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Legislative Session 2004

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IDAPA 04 - OFFICE OF THE ATTORNEY GENERAL

04.20.01 - RULES IMPLEMENTING THE IDAHO TOBACCO MASTER SETTLEMENT AGREEMENT COMPLEMENTARY ACT

DOCKET NO. 04-2001-0301

NOTICE OF RULEMAKING

PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the amendments to the temporary rule is September 10, 2003. This pending rule has been adopted by the Attorney General and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that the Attorney General has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section 39-7807(4), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is necessary to effectively implement and enforce Idaho's Tobacco Master Settlement Agreement Complementary Act (the Act), effective July 1, 2003. This rule was adopted to effect the purposes for which the Legislature adopted this Act, which is to prevent violations of Idaho's Tobacco Master Settlement Agreement Act and thereby safeguard the master settlement agreement, the fiscal soundness of the State and the public health.

The temporary rule and the proposed rule have been amended to clarify the appeals process for Attorney General determinations related to the removal or exclusion from the directory of a brand family or nonparticipating tobacco product manufacturer; provide additional grounds for when a nonparticipating tobacco product manufacturer must provide quarterly certifications and make quarterly escrow deposits; describe with more detail the deadlines for providing notice related to quarterly certifications and quarterly deposits; set forth the consequences for untimely or incomplete quarterly certifications and quarterly escrow deposits; address the status of the directory for the time period July 1, 2003 to September 1, 2003; provide for the giving of notice to stamping agents and tobacco product manufacturers prior to the Attorney General removing a brand family or tobacco product manufacturer from the directory; and make clear that the tobacco product manufacturer bears the burden of proof to establish that it or a particular brand family is entitled to be listed in the directory.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Attorney General amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes different from the proposed rule are printed in this bulletin. The original text of the proposed rule was published in the August 6, 2003 Idaho Administrative Bulletin, Volume 03-8, pages 21 through 25.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule and the amendments to the temporary rule, contact Brett T. DeLange, Deputy Attorney General at 334-4114.

DATED this 10th day of September, 2003.

Brett T. DeLange, Deputy Attorney General
Office of the Attorney General
Consumer Protection Unit
P.O. Box 83720, Boise, Idaho 83720-0010

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OFFICE OF THE ATTORNEY GENERAL
Idaho Tobacco Master Settlement Agreement

Docket No. 04-2001-0301 - Pending Rule
Amendment to Temporary Rule

IDAPA 04, TITLE 20, CHAPTER 01

RULES IMPLEMENTING THE IDAHO TOBACCO MASTER SETTLEMENT AGREEMENT COMPLEMENTARY ACT

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-8, August 6, 2003, pages 21 through 25.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 04-2001-0301

Section 004 (Complete Section)

004. ADMINISTRATIVE APPEALS (Rule 4).

Except as provided by CAR 200 and Section 39-8407(1), Idaho Code, ~~There is no provision for administrative appeals.~~ ~~(7-1-03)T~~ (9-10-03)T

Subchapter B -- Quarterly ~~Reports~~ Certifications and Escrow Deposits (Rules 100 through 199)

Sections 100 through 105 (Complete Sections)

100. QUARTERLY ~~REPORTS~~ CERTIFICATIONS AND ESCROW DEPOSITS (Rule 100).

To promote compliance with Section 39-7803(b), Idaho Code, the Attorney General may require nonparticipating manufacturers quarterly to certify their compliance with the Idaho tobacco master settlement agreement act. The Attorney General may also require nonparticipating manufacturers to make the escrow payments required by Section 39-7803(b), Idaho Code, in quarterly installments during the year in which the sales covered by such payments are made. This rule applies to nonparticipating manufacturers who meet any of the following criteria:

~~(7-1-03)T~~ (9-10-03)T

01. No Previous Escrow Deposit. Nonparticipating manufacturers that have not previously established and funded a qualified escrow fund in Idaho; ~~(7-1-03)T~~

02. No Escrow Deposit For More Than One Year. Nonparticipating manufacturers that have not made any escrow deposits for more than one (1) year; ~~(7-1-03)T~~

03. Untimely Or Incomplete Deposits. Nonparticipating manufacturers that have failed to make a timely and complete escrow deposit for any prior calendar year; ~~and~~ ~~(7-1-03)T~~ (9-10-03)T

04. Outstanding Judgments. Nonparticipating manufacturers that have failed to pay any judgment,

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including any civil penalty;

~~(7-1-03)F~~(9-10-03)T

05. Large Sales Volume. Nonparticipating manufacturers that have more than one million six hundred thousand (1,600,000) of their cigarettes sold during a quarter; and (9-10-03)T

06. Other Reasonable Cause. In addition to the reasons specified above, the Attorney General may require quarterly escrow deposits from a nonparticipating manufacturer if the Attorney General has reasonable cause to believe the nonparticipating manufacturer may not make its full required escrow deposit by April 15 of the year following the year in which the cigarettes sales were made. (9-10-03)T

101. DEADLINE FOR QUARTERLY ~~REPORTS~~ ESCROW DEPOSITS (Rule 101).

Nonparticipating manufacturers who are required to ~~submit quarterly reports~~ make quarterly escrow deposits must do so no later than thirty (30) days after the end of the quarter in which the sales are made. ~~For example, the deadline for making a quarterly escrow deposit for cigarette sales occurring in February is April 30 of the same year.~~

~~(7-1-03)F~~(9-10-03)T

102. DEADLINE FOR SUBMITTING QUARTERLY CERTIFICATION AND NOTIFYING ATTORNEY GENERAL OF QUARTERLY ESCROW DEPOSIT (Rule 102).

Nonparticipating manufacturers who are required to make quarterly escrow deposits, must provide the Attorney General with official notification of the quarterly escrow deposit no later than ten (10) days after the deadline for which an escrow deposit is required. Nonparticipating manufacturers must also provide their quarterly certifications within the same deadline. For example, the deadline for certifying and officially notifying the Attorney General of a quarterly escrow deposit for sales of cigarettes that occurred in February is May 10 of the same year. (9-10-03)T

103. QUARTERLY PERIODS DEFINED (Rule 103).

For purposes of this subchapter, the calendar year shall be divided into the following quarters: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31. (9-10-03)T

104. UNTIMELY OR INCOMPLETE QUARTERLY CERTIFICATION OR QUARTERLY ESCROW DEPOSIT (Rule 104).

If the required quarterly escrow deposit is not timely made in full, or the required quarterly certification is not provided to the Attorney General, or the Attorney General does not receive timely official notice of the quarterly escrow deposit, the delinquent nonparticipating manufacturer and its brand families may be removed from the directory. (9-10-03)T

~~1025.~~ -- 199. (RESERVED).

Section 300 (Partial Section)

300. DIRECTORY (Rule 300).

The Attorney General shall develop, maintain and publish the directory, which shall list all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of Section 39-8403(1), Idaho Code, and all brand families that are listed in such certifications; provided, however,

~~(7-1-03)F~~(9-10-03)T

Section 302 (Complete Section)

302. DIRECTORY FOR JULY 1, 2003 TO SEPTEMBER 1, 2003 (Rule 302).

For the time period July 1, 2003 to September 1, 2003, the directory shall be deemed to be every participating manufacturer and every nonparticipating manufacturer who has established and properly funded a qualified escrow fund for Idaho. (7-1-03)T

01. Participating Manufacturers In Directory. The Attorney General maintains a list, ~~located at: http://www.naag.org/upload/1054832000_PM_list.pdf identifies~~ available for inspection, of every participating manufacturer for the time period July 1, 2003 to September 1, 2003. ~~(7-1-03)F~~(9-10-03)T

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Docket No. 04-2001-0301 - Pending Rule
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02. **Nonparticipating Manufacturers In Directory.** Attorney General maintains a list, located at: <http://www2.state.id.us/ag/consumer/tobacco/escrowlist.pdf> identifies available for inspection, of every nonparticipating manufacturer who has which, for the time period July 1, 2003 to September 1, 2003, established and properly funded a qualified escrow fund for Idaho. ~~(7-1-03)T~~ (9-10-03)T

Sections 303 through 308 (Complete Sections)

303. DIRECTORY UPDATES (Rule 303).

The Attorney General shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand families to keep the directory in conformity with the requirements of this chapter and Section 39-8403, Idaho Code. ~~(7-1-03)T~~ (9-10-03)T

304. DIRECTORY UPDATE NOTICES -- STAMPING AGENTS (Rule 304).

The Attorney General shall transmit by electronic mail, if possible, or by other means as are reasonable to each stamping agent, notice of the addition to, or removal from, the directory of any tobacco product manufacturer or brand family. With respect to notices of removal from the directory, such notice shall be provided ten (10) calendar days prior to the Attorney General removing the tobacco product manufacturer or its brand family or both from the directory. (9-10-03)T

305. DIRECTORY UPDATE NOTICES -- TOBACCO PRODUCT MANUFACTURER -- ADDITION (Rule 305).

The first time a tobacco product manufacturer complies with Section 39-8403(1), Idaho Code, the Attorney General shall notify by mail the tobacco product manufacturer of such compliance and that it will be added to the directory. The notice shall also indicate each brand family of the tobacco product manufacturer that the Attorney General has determined will be added to the directory. (9-10-03)T

306. DIRECTORY UPDATE NOTICES -- TOBACCO PRODUCT MANUFACTURER -- NONINCLUSION OR REMOVAL (Rule 306).

The Attorney General shall notify by certified mail to the tobacco product manufacturer's agent for service of process of any decision not to include in or to remove from the directory the tobacco product manufacturer, a brand family of the tobacco product manufacturer, or both. With respect to notices of removal from the directory, such notice shall be provided ten (10) calendar days prior to the Attorney General taking action as provided in the notice. (9-10-03)T

307. BURDEN OF ESTABLISHING ENTITLEMENT TO BE LISTED IN THE DIRECTORY (Rule 307).

The burden of proof shall be on the tobacco product manufacturer to establish that it or a particular brand family is entitled to be listed in the directory. (9-10-03)T

3048. -- 999. (RESERVED).

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IDAPA 04 - OFFICE OF THE ATTORNEY GENERAL

04.20.01 - RULES IMPLEMENTING THE IDAHO TOBACCO MASTER SETTLEMENT AGREEMENT COMPLEMENTARY ACT

DOCKET NO. 04-2001-0301

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2003.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 39-8407(4), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

**August 21, 2003
10 a.m. to 12 noon and 1 p.m. to 3 p.m.
LBJ Building Conference Room located in the basement
650 W State St., Boise, Idaho**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rule is necessary to effectively enforce Idaho's Tobacco Master Settlement Agreement Complementary Act, effective July 1, 2003. Failure to adopt this rule will jeopardize our ability to realize the purposes for which the Legislature adopted this Act.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Attorney General has found that temporary adoption of the rule is appropriate for the following reasons:

Immediate implementation of Idaho's Tobacco Master Settlement Agreement Complementary Act is necessary to effectuate its purposes as provided by the Legislature.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because temporary rulemaking was necessary and this rule is necessary to comply with Idaho's Tobacco Master Settlement Agreement Complementary Act, effective July 1, 2003.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Brett T. DeLange, Deputy Attorney General at 334-4114.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 28, 2003.

DATED this 16th day of June, 2003.

Brett T. DeLange, Deputy Attorney General
Office of the Attorney General
Consumer Protection Unit
P.O. Box 83720, Boise, Idaho 83720-0010

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 04-2001-0301

IDAPA 04, TITLE 20, CHAPTER 01

04.20.01 - RULES IMPLEMENTING THE IDAHO TOBACCO MASTER SETTLEMENT AGREEMENT COMPLEMENTARY ACT

Subchapter A -- General Provisions and Definitions (Rules 0 through 99)

000. LEGAL AUTHORITY (Rule 0).

This chapter is adopted under the legal authority of Title 39, Chapter 84, Idaho Code. (7-1-03)T

001. TITLE AND SCOPE (Rule 1).

01. Title. The title of this chapter is "Rules Implementing the Idaho Tobacco Master Settlement Agreement Complementary Act". (7-1-03)T

02. Scope. This chapter has the following scope: (7-1-03)T

a. These rules govern compliance with, and seek to implement, Idaho's Tobacco Master Settlement Agreement Complementary Act. (7-1-03)T

b. These rules pertain to the sale, stamping and reporting of cigarettes in Idaho. (7-1-03)T

002. WRITTEN INTERPRETATIONS -- AGENCY GUIDELINES (Rule 2).

Written interpretations to these rules in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments submitted in the rulemaking in the adoption of these rules are published in the Idaho Administrative Bulletin. Any memorandum of understanding or letters explaining the Attorney General's policies concerning administration of these rules will be maintained for public inspection. (7-1-03)T

003. PUBLIC RECORDS ACT COMPLIANCE (Rule 3).

All filings submitted according to the procedures of this chapter are public records. Any memorandum of understanding or letter explaining the Attorney General's policies concerning administration of these rules are public records available for inspection. (7-1-03)T

004. ADMINISTRATIVE APPEALS (Rule 4).

There is no provision for administrative appeals. (7-1-03)T

005. INCORPORATION BY REFERENCE (Rule 5).

No documents are incorporated by reference in this chapter. (7-1-03)T

006. CITATION (Rule 6).

The official citation of this chapter is IDAPA 04.20.01.000 et seq. For example, this section's citation is IDAPA 04.20.01.006. In documents submitted to the Attorney General or issued by the Attorney General, these rules may be cited as CAR (Complementary Act Rules) and rule number less leading zeroes. For example, this rule may be cited as CAR 6. (7-1-03)T

007. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS (Rule 7).

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OFFICE OF THE ATTORNEY GENERAL
Idaho Tobacco Master Settlement Agreement**Docket No. 04-2001-0301**
Temporary and Proposed Rulemaking

01. Address. The Attorney General's mailing address is Attorney General, Room 210, Statehouse, Boise, Idaho 83720-0010. The Attorney General's street address is 700 West Jefferson, Room 210 of the Idaho Statehouse. (7-1-03)T

02. Telephone. The Attorney General's telephone number is (208) 334-2424. (7-1-03)T

03. FAX. The Attorney General's facsimile telephone number is (208) 334-2830. (7-1-03)T

04. Office Hours. The Attorney General's office hours for accepting filings under this chapter are from 8 a.m. through 5 p.m., Monday through Friday, except state holidays. (7-1-03)T

008. DEFINITIONS (Rule 8).
As used in this chapter: (7-1-03)T

01. Brand Family. Brand family means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors including, but not limited to, "menthol," "lights," "kings," and "100s," and includes any brand name (alone or in conjunction with any other word) trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes. (7-1-03)T

02. Cigarette. Cigarette has the same meaning as that term is defined in Section 39-7802(d), Idaho Code. (7-1-03)T

03. Directory. Directory means the Directory of Compliant Tobacco Product Manufacturers and Brands, as provided for by Section 39-8403(2), Idaho Code. (7-1-03)T

04. Master Settlement Agreement. Master settlement agreement has the same meaning as that term is defined in Section 39-7802(e), Idaho Code. (7-1-03)T

05. Nonparticipating Manufacturer. Nonparticipating manufacturer means any tobacco product manufacturer that is not a participating manufacturer. (7-1-03)T

06. Participating Manufacturer. Participating manufacturer has the same meaning as that term is defined in section II(jj) of the master settlement agreement and all amendments thereto. (7-1-03)T

07. Qualified Escrow Fund. Qualified escrow fund has the same meaning as that term is defined in Section 39-7802(f), Idaho Code. (7-1-03)T

08. Stamping Agent. Stamping agent means a person that is authorized or required to affix tax stamps to packages or other containers of cigarettes under Title 63, Chapter 25, Idaho Code. (7-1-03)T

09. Tobacco Product Manufacturer. Tobacco product manufacturer has the same meaning as that term is defined in Section 39-7802(i), Idaho Code. (7-1-03)T

009. EFFECTIVE DATE (Rule 9).
Unless otherwise indicated, the effective date of every rule in this chapter is July 1, 2003. (7-1-03)T

010. -- 099. (RESERVED).

Subchapter B -- Quarterly Reports (Rules 100 through 199)

100. QUARTERLY REPORTS (Rule 100).

To promote compliance with Section 39-7803(b), Idaho Code, the Attorney General may require nonparticipating manufacturers to make the escrow payments required by Section 39-7803(b), Idaho Code, in quarterly installments

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during the year in which the sales covered by such payments are made. This rule applies to nonparticipating manufacturers who meet any of the following criteria: (7-1-03)T

01. No Previous Escrow Deposit. Nonparticipating manufacturers that have not previously established and funded a qualified escrow fund in Idaho; (7-1-03)T

02. No Escrow Deposit For More Than One Year. Nonparticipating manufacturers that have not made any escrow deposits for more than one (1) year; (7-1-03)T

03. Untimely Or Incomplete Deposits. Nonparticipating manufacturers that have failed to make a timely and complete escrow deposit for any prior calendar year; and (7-1-03)T

04. Outstanding Judgments. Nonparticipating manufacturers that have failed to pay any judgment, including any civil penalty. (7-1-03)T

101. DEADLINE FOR QUARTERLY REPORTS (Rule 101).

Nonparticipating manufacturers who are required to submit quarterly reports must do so no later than thirty (30) days after the end of the quarter in which the sales are made. (7-1-03)T

102. -- 199. (RESERVED).

Subchapter C -- Review of Decisions to Exclude or Remove from the Directory
(Rules 200 through 299)

200. REVIEW OF ATTORNEY GENERAL DECISIONS RELATED TO EXCLUDING OR REMOVING FROM THE DIRECTORY (Rule 200).

A determination of the Attorney General to exclude or remove from the directory a brand family or tobacco product manufacturer shall be subject to review in the manner prescribed by Idaho's administrative procedure act, Title 67, Chapter 52, Idaho Code. (7-1-03)T

201. -- 299. (RESERVED).

Subchapter D -- Directory
(Rules 300 through 399)

300. DIRECTORY (Rule 300).

The directory shall list all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of Section 39-8403(1), Idaho Code, and all brand families that are listed in such certifications; provided, however, (7-1-03)T

01. Missing Or Noncompliant Certification. The Attorney General shall not include or retain in such directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the Attorney General determines is not in compliance with Section 39-8403(1)(b) and (c), Idaho Code, unless the Attorney General has determined that such violation has been cured to the satisfaction of the Attorney General. (7-1-03)T

02. Inadequate Escrow Deposit And Outstanding Judgments. Neither a tobacco product manufacturer nor a brand family shall be included or retained in the directory if the Attorney General concludes in the case of a nonparticipating manufacturer that: (7-1-03)T

a. Any escrow payment required pursuant to Section 39-7803(b), Idaho Code, for any period and for any brand family, whether or not listed by such nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General; or

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(7-1-03)T

b. Any outstanding final judgment, including interest thereon, for a violation of Idaho's tobacco master settlement agreement act has not been fully satisfied for such brand family and such manufacturer. (7-1-03)T

301. PUBLICATION OF DIRECTORY (Rule 301).

The directory will be developed and published by September 1, 2003. The directory will be available on the Internet at the Attorney General's website. The homepage address for the Attorney General's website is: <http://www2.state.id.us/ag/> (7-1-03)T

302. DIRECTORY FOR JULY 1, 2003 TO SEPTEMBER 1, 2003 (Rule 302).

For the time period July 1, 2003 to September 1, 2003, the directory shall be deemed to be every participating manufacturer and every nonparticipating manufacturer who has established and properly funded a qualified escrow fund for Idaho. (7-1-03)T

01. Participating Manufacturers In Directory. The list located at: http://www.naag.org/upload/1054832000_PM_list.pdf identifies every participating manufacturer. (7-1-03)T

02. Nonparticipating Manufacturers In Directory. The list located at: <http://www2.state.id.us/ag/consumer/tobacco/escrowlist.pdf> identifies every nonparticipating manufacturer who has established and properly funded a qualified escrow fund for Idaho. (7-1-03)T

303. DIRECTORY UPDATES (Rule 303).

The Attorney General shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand families to keep the directory in conformity with the requirements of this chapter. The Attorney General shall transmit by electronic mail, if possible, or by other means as are reasonable to each stamping agent, notice of the addition to, or removal from, the directory of any tobacco product manufacturer or brand family. (7-1-03)T

304. -- 999. (RESERVED).

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IDAPA 11 - IDAHO STATE POLICE

11.05.01 - RULES GOVERNING ALCOHOL BEVERAGE CONTROL

DOCKET NO. 11-0501-0301

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-2901A, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 1, 2003 Idaho Administrative Bulletin, Volume 03-10, pages 118 and 119.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lieutenant Bob Clements at (208) 884-7060.

DATED this 22nd day of October, 2003.

Colonel R. Dan Charboneau, Director
Idaho State Police
700 S. Stratford Dr.
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7003
884-7090 (FAX)

IDAPA 11, TITLE 05, CHAPTER 01

RULES GOVERNING ALCOHOL BEVERAGE CONTROL

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-10, October 1, 2003, pages 118 and 119.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

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IDAPA 11 - IDAHO STATE POLICE

11.05.01 - RULES GOVERNING ALCOHOL BEVERAGE CONTROL

DOCKET NO. 11-0501-0301

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2004.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Title 23, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The definition of a restaurant for the purposes of the alcohol beverage code requires revision to provide licensees with more specific information upon which to make business decisions and to allow more consistent enforcement of Title 23 Alcohol Beverage Code. Rules governing display of licenses need to be added and/or changed to provide licensees with specific period of time following loss or move of a licensed premise, in which to secure and occupy a new premise and display the alcohol beverage license.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(a) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Protection of the public safety, or welfare.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Lt. Bob Clements, 884-7060.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 20th day of August, 2003.

Colonel R. Dan Charboneau, Director
Idaho State Police
700 S. Stratford Dr.
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7003 / 884-7090 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0501-0301

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010. DEFINITIONS.

01. Licensee. Any person who has received a license from the Director under any of the provisions of Title 23, Chapters 9, 10 or 13, Idaho Code. (7-1-93)

02. Licensed Premises. Any premises for which a license has been issued under any of the provisions of Title 23, Chapters 9, 10 or 13, Idaho Code. All areas included on the floor plan submitted to the Director with the licensee's application for a license shall constitute the licensed premises. In the event of loss or move of the physical licensed premises, the licensee has ninety (90) days to secure and occupy a new premises in which to display the license. An additional sixty (60) days may be granted by the Director, upon petition by the license holder. (7-1-93)(1-1-04)T

03. New Licenses. For purposes of Section 23-908(4), Idaho Code, a "new license" is one that has become available as an additional license within a city's limits under the quota system after July 1, 1980. The requirement of Section 23-908(4), Idaho Code, that a new license be placed into actual use by the licensee and remain in use for at least six (6) consecutive months shall be satisfied if the licensee makes actual sales of liquor by the drink during at least eight (8) hours per day, no fewer than six (6) days per week. (1-1-94)

04. Restaurant. The term Restaurant, as defined by Section 23-942(c), Idaho Code, is further defined as an establishment maintained, advertised and held out to the public as primarily a food eating establishment, where individually priced meals are prepared and regularly served to the public, primarily for on-premise consumption. The establishment must also have a dining room or rooms, kitchen and cooking facilities for the preparation of food, and the number, and type of employees normally used in the preparing, cooking and serving of meals. The establishment must be able to demonstrate to the satisfaction of the Director, through recordkeeping, that no more than fifty percent (50%) of the gross revenues from the sale of food and beverages is derived from the sale of alcoholic beverages. Primarily as defined for the purposes of Section 010, also includes that the licensee must show to the director the following: (4-5-00)(1-1-04)T

a. An established menu identifying the individually priced meals for consumption; (1-1-04)T

b. Food service and preparation occurs on the premises by establishment employees; (1-1-04)T

c. Stoves, ovens, refrigeration equipment or such other equipment usually and normally found in restaurants are located on the premises of the establishment; (1-1-04)T

d. The licensee must demonstrate to the satisfaction of the Director, through appropriate business records, that the establishment is advertised and held out to the public as primarily a food eating establishment, or that at least forty percent (40%) of the establishments consumable purchases are derived from purchases of food and non-alcoholic beverages. (1-1-04)T

05. Stock Transfer. For the purposes of Section 23-908, Idaho Code, the sale or exchange of stock in a closely held corporation holding a license shall be deemed a transfer of the license. However, the sale or exchange of shares in a family corporation among family members, shall not be deemed a transfer. (3-13-02)

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IDAPA 11 - IDAHO STATE POLICE

11.10.01 - RULES GOVERNING THE ILETS - IDAHO LAW ENFORCEMENT TELETYPEWRITER SYSTEM

DOCKET NO. 11-1001-0301

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-2901A, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 1, 2003 Idaho Administrative Bulletin, Volume 03-10, pages 120 through 131.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Bob Taylor at (208) 884-7132.

DATED this 22nd day of October, 2003.

Colonel R. Dan Charboneau, Director
Idaho State Police
700 S. Stratford Dr.
P.O. Box 700,
Meridian, ID 83680-0700
(208) 884-7003
884-7090 (FAX)

IDAPA 11, TITLE 10, CHAPTER 01

RULES GOVERNING THE ILETS - IDAHO LAW ENFORCEMENT TELETYPEWRITER SYSTEM

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-10, October 1, 2003, pages 120 through 131.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

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IDAPA 11 - IDAHO STATE POLICE

11.10.01 - RULES GOVERNING THE ILETS - IDAHO LAW ENFORCEMENT TELETYPEWRITER SYSTEM

DOCKET NO. 11-1001-0301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 19, Chapter 52, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The proposed rule amendments will strengthen ILETS network security requirements to comply with federal standards, particularly in regard to password and encryption policies. They will also update terminology relating to network security and agency agreements and will update the citations for national policies incorporated by reference.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because negotiated rulemaking does not apply. The ILETS Board has reviewed the proposed revisions and approved them at a regularly scheduled meeting. The majority of the changes relate to grammar changes to conform to a standard.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Robert Taylor, 884-7130.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 7th day of August, 2003.

Colonel R. Dan Charboneau
Director
Idaho State Police
700 S. Stratford Dr.
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7003
884-7090 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1001-0301

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000. LEGAL AUTHORITY.

Title 19, Chapter 52, Idaho Code, creates a teletypewriter communications board and authorizes it to make rules necessary to establish and operate the Idaho ~~Law e~~Enforcement ~~T~~eletypewriter ~~s~~ystem (ILETS). ~~(3-30-01)~~(____)

001. TITLE AND SCOPE.

01. Title. These rules ~~shall be~~ are cited as IDAPA 11.10.01, "Rules Governing ILETS - Idaho Law Enforcement Teletypewriter System". ~~(3-30-01)~~(____)

02. Scope. These rules relate to the governance and operation of the Idaho Law Enforcement Teletypewriter System. ~~(3-30-01)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

Administrative appeals under this chapter ~~shall be~~ are governed by the rules of administrative procedure of the attorney general, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General". ~~(3-30-01)~~(____)

004. INCORPORATION BY REFERENCE.

01. Incorporated Documents. IDAPA 11.10.01 incorporates by reference the full text of the requirements relating to criminal justice information and the system used to transport such information found in the following documents: ~~(3-30-01)~~(____)

a. "Criminal Justice Information Systems," 28 CFR Part 20 ~~(1999)~~ (July 1, 2003); ~~(3-30-01)~~(____)

b. "Criminal Justice Information Systems--CJIS Security Policy," Federal Bureau of Investigation, National Crime Information Center ~~(May 1999)~~, Version 3.1 (September 2002); ~~(3-30-01)~~(____)

c. "National Crime Information Center 2000, Operating Manual," Federal Bureau of Investigation, National Crime Information Center ~~(April 1, 1998)~~ (December 1999); ~~(3-30-01)~~(____)

d. "National Law Enforcement Telecommunication System, Users Guide," NLETS, Users Guide, ~~(November 7, 1997)~~ (January 1, 2003); ~~(3-30-01)~~(____)

e. "National Law Enforcement Telecommunication System, Policies and Procedures," NLETS, Policies and Procedures, ~~(May 22, 1989)~~ (May 1, 2002). ~~(3-30-01)~~(____)

02. Document Availability. The above listed documents are available during normal working hours for inspection and copying at the Idaho State Police, Bureau of Criminal Identification, 700 South Stratford Drive, Meridian, Idaho. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

006. PUBLIC RECORD ACT COMPLIANCE.

All records associated with the board and its management of ILETS are subject to, and in compliance with, the Idaho Public Records Act, Title 9, Chapter 1, Idaho Code. Information made available to ILETS users with access to the network is from various sources, including other states, nations, and the federal government. That information remains subject to the laws and regulations of its original source or official custodian. (____)

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~~0067.~~ -- 009. (RESERVED).

010. DEFINITIONS.

~~01.~~ **Access Agency.** An agency that electronically accesses ILETS through the services of an interface agency. ()

~~042.~~ **Administration Of Criminal Justice.** (3-30-01)

a. Administration of Criminal Justice means performance of any of the following activities: (3-30-01)

i. Detection; (3-30-01)

ii. Apprehension; (3-30-01)

iii. Detention; (3-30-01)

iv. Pretrial release; (3-30-01)

v. Post-trial release; (3-30-01)

vi. Prosecution; (3-30-01)

vii. Adjudication; (3-30-01)

viii. Correctional supervision; or (3-30-01)

ix. Rehabilitation of accused persons or criminal offenders. (3-30-01)

b. The administration of criminal justice includes: (3-30-01)

i. Criminal identification activities; and (3-30-01)

ii. The collection, storage, and dissemination of criminal history record information. (3-30-01)

~~023.~~ **Associated System.** Any automated or manual information system that is accessible through ILETS. (3-30-01)

~~04.~~ **Board.** The board created, ~~pursuant to~~ by Title 19, Chapter 52, Idaho Code, to establish priorities and operational policies and procedures relating to ILETS. ~~(3-30-01)~~()

~~035.~~ **Criminal Justice Agency.** (3-30-01)

a. Federal and state courts having jurisdiction to hear criminal matters; and (3-30-01)

b. A government agency or a subunit of ~~an~~ government agency that performs the administration of criminal justice pursuant to a statute or executive order and that allocates a substantial part of its annual budget to the administration of justice. ~~(3-30-01)~~()

~~056.~~ **Department.** The Idaho ~~Department of Law Enforcement~~ State Police, or its successor agency. ~~(3-30-01)~~()

~~067.~~ **Executive Officer.** ~~As provided by Title 19, Chapter 52, Idaho Code, means~~ A position on the ILETS Board filled by the director of the Idaho ~~Department of Law Enforcement~~ State Police, or its successor agency. ~~(3-30-01)~~()

~~078.~~ **III.** The Interstate Identification Index, which is a cooperative federal-state system for the

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exchange of automated criminal history records and, to the extent of their participation in the III system, the criminal history repositories of the states. (3-30-01)

089. ILETS. The Idaho Law Enforcement Teletypewriter (telecommunication) system as established by the director of ~~law enforcement~~ Idaho State Police pursuant to Title 19, Chapter 52, Idaho Code, ~~and~~ includes all hardware, software, electronic switches, peripheral gear, microwave links, and circuitry, ~~and terminal devices~~ that comprise the system ~~and includes access to the system.~~ (3-30-01)()

10. Interface Agency. An agency that has management control of a computer system directly connected to ILETS. ()

0911. Management Control Agreement. A written agreement between a criminal justice agency and a non-criminal justice agency that provides services (dispatching, record keeping, computer services, etc.) to the criminal justice agency. The agreement ~~shall~~ gives the criminal justice agency authority to set and enforce policies governing the non-criminal justice agency's access to ILETS. (3-30-01)()

102. NCIC 2000. The Federal Bureau of Investigation; National Crime Information Center, ~~which~~ is a computerized information system that includes telecommunications lines and ~~any~~ message facilities authorized by law, regulation, or policy approved by the United States Attorney General to link local, state, tribal, federal, foreign, and international criminal justice agencies for the purpose of exchanging NCIC related information. The NCIC 2000 system includes information in the III system. (3-30-01)()

143. NLETS. The National Law Enforcement Telecommunication System, Incorporated, is a national computerized message switching system that links national and state criminal justice information systems. (3-30-01)()

124. Non-Criminal Justice Agency. A state agency, federal agency, or unit of local government that is not a criminal justice agency. The term does not refer to private individuals, corporations, or non-governmental agencies or organizations. (3-30-01)

011. (RESERVED).

012. EXECUTIVE OFFICER OF THE BOARD.

01. Authority Of Office. The executive officer ~~shall~~ represents the board in the day-to-day administration of ILETS and is responsible for ensuring that all policies and decisions of the board are promulgated pursuant to the authority of Chapter 52, Title 19, Idaho Code. The executive officer may delegate duties to employees and officers of the department and ~~shall~~ execute instruments for, and on behalf of, the board and ILETS. (3-30-01)()

02. Additional Responsibilities. In addition to the responsibilities assigned to the office by statute, the executive officer is responsible for ensuring, subject to adequate legislative appropriations, that the board receives adequate staff support and that the following staff duties are performed: (3-30-01)

a. Preparation and dissemination of agendas, posting of legal notices of all meetings, and maintenance of a written record of the proceedings of board meetings; and (3-30-01)

b. Management and safekeeping of all documents relating to the board and ILETS operations. (3-30-01)

03. Governing Policies And Rules. The executive officer and any department employees and officials assigned by the executive officer to support ILETS operations will be governed by policies and rules of the State of Idaho and the department concerning, but not limited to, fiscal, purchasing, and personnel matters. (3-30-01)

013. ILETS BOARD; == MEETINGS AND QUORUM.

01. Schedule Of Meetings. The board ~~shall~~ holds regular meetings ~~at least~~ twice annually and may

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hold special meetings at other times as the executive officer deems necessary or upon the written request of a majority of the board. The regular semi-annual meetings of the board ~~shall~~ will be scheduled on such dates and at such times as the executive officer may determine after consultation with the members. Meeting announcements and agendas ~~shall~~ will be mailed to each member not less than ten (10) working days before a regular meeting. ~~(3-30-01)~~(____)

02. Quorum. When meeting, four (4) members of the board ~~shall~~ constitute a quorum necessary for transacting business. ~~(3-30-01)~~(____)

03. Representation At Meetings. A board member may not appoint an alternate to attend a meeting and exercise the voting privilege of that member. (3-30-01)

04. Posting And Minutes Of Meetings. Notice of ~~B~~board meetings ~~shall~~ will be posted and meetings will be conducted in compliance with the "Idaho Open Meeting Law", Sections 67-2340 through 67-2347, Idaho Code. Minutes of all regular and special meetings of the board ~~shall~~ will be prepared and maintained by staff assigned by the executive director to support the board. ~~(3-30-01)~~(____)

014. ILETS BOARD; ~~=~~ POWERS AND DUTIES, CHAIRMAN, AND AD HOC ADVISORY COMMITTEES.

01. Powers And Duties. Pursuant to its authority under Title 19, Chapter 52, Idaho Code, the board establishes policies relating to management and operation of ILETS. The board ~~shall~~ enforce compliance with all laws and regulations governing ILETS operations. ~~(3-30-01)~~(____)

02. Election Of Chairman. At the first regular meeting of a calendar year, the board ~~shall~~ elects a chairman from its membership ~~a chairman~~ by majority vote ~~of the board~~. The chairman ~~shall~~ serves a term of one (1) year and may succeed himself. ~~(3-30-01)~~(____)

03. Presiding Officer. The chairman ~~shall~~ presides at all meetings and conduct the meetings pursuant to "Roberts' Rules of Order, Current Revised Edition". If the chairman is absent ~~at~~ from a meeting, the executive officer ~~shall~~ presides at that meeting. ~~(3-30-01)~~(____)

04. Advisory Committees. With the approval of the board, the chairman may appoint ad hoc advisory committees to assist the board in the execution of its statutory duties. An advisory committee may include non-board members who would be of value to the committee's assigned task. An advisory committee ~~shall~~ must include ~~not less than~~ at least one (1) member of the ILETS board. Committee reports ~~shall~~ are to be submitted to the board in writing. ~~(3-30-01)~~(____)

015. ILETS BOARD; ~~=~~ RESIGNATIONS AND REPLACEMENTS; NOTIFICATION.

01. Members Who No Longer Qualify. Any board member who ceases to qualify as a member ~~shall~~ must at once notify the Governor and the executive officer. ~~(3-30-01)~~(____)

02. Resignations. Any board member who desires to terminate that member's service on the board ~~shall~~ must at once notify the Governor and the executive officer of that intention. ~~(3-30-01)~~(____)

03. Notification Of Relevant Professional Associations. The executive officer ~~shall~~ forwards any notification received from a member to the relevant professional association representing Idaho sheriffs and chiefs of police. ~~(3-30-01)~~(____)

016. ILETS NETWORK.

01. Establishment. ~~Pursuant to Title 19, Chapter 52, Idaho Code, the~~ executive officer ~~shall~~ establishes ILETS as a program of the ~~department of law enforcement~~ Idaho State Police or its successor agency. ~~(3-30-01)~~(____)

02. Responsibilities. The program, as established by the executive officer, ~~shall have~~ has the following responsibilities: ~~(3-30-01)~~(____)

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- a. Develop and operate a computerized criminal justice telecommunications and information system that provides message switching and record inquiry and retrieval capabilities. (3-30-01)
- b. Publish an ILETS Operations Manual and distribute copies to each user agency. (3-30-01)
- c. Function as the NCIC control terminal agency and the NLETS control terminal agency for the State of Idaho. (3-30-01)
- d. Assist and train criminal justice agencies regarding information retrieved from ILETS and associated systems for use in administration of criminal justice. (3-30-01)
- e. Develop and maintain linkages with the Idaho Transportation Department, Idaho Department of Correction, other agencies and systems to make appropriate information available to Idaho criminal justice agencies that will assist them in the enforcement of state criminal and traffic laws and regulations. (3-30-01)
- f. Provide staff support to the ILETS board. (3-30-01)
- g. Operate a program of record validation, quality control, and audits to ensure that records entered into ILETS and NCIC files by the department and user agencies are kept accurate and complete and that compliance with state and national standards is maintained. (3-30-01)
- h. Create model management control agreements between criminal justice agencies and non-criminal justice agencies. (3-30-01)
- i. Provide assistance and information access to non-criminal justice user agencies for statutory licensing, employment and regulatory purposes and for other purposes authorized by law and approved by the board. (3-30-01)

017. AGENCY ACCESS TO ILETS.

01. Authorized Agencies. Consistent with Title 19, Chapter 52, Idaho Code, which mandates the exclusive use of ILETS for law enforcement and traffic safety purposes, access to ILETS shall be restricted to the following governmental agencies: (3-30-01)

- a. Criminal justice agencies; (3-30-01)
- b. Non-criminal agencies that provide computer services, dispatching support, or other direct support service to one (1) or more criminal justice agencies, and which have signed an ILETS-approved management control agreement with the criminal justice agency; (3-30-01)
- c. Non-criminal justice agencies with a statutory requirement to use information capabilities that may be available via ILETS, and use of terminal access will not adversely affect criminal justice agency users, and use of the terminal will be for the administration of criminal justice; and (3-30-01)
- d. Non-criminal justice agencies that provide information or capabilities needed by criminal justice agencies for a criminal justice purpose, and access or use of a terminal will improve the ability to provide such information or capabilities. (3-30-01)

02. Management Control Agreements. The management control agreement between a criminal justice agency and a non-criminal justice agency ~~will~~ grants to the criminal justice agency the authority to set and enforce: ~~(3-30-01)~~ ()

- a. Priorities of service; (3-30-01)
- b. Standards for the selection, supervision, and termination of personnel authorized to access ILETS; and (3-30-01)

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c. Policies governing the operation of computers, circuits, and telecommunications terminals used to process, store, or transmit information to or receive information from ILETS. (3-30-01)

03. Board Approval. The board ~~shall~~ reviews all requests for access to ILETS and determine whether an agency meets the criteria for access and whether access is appropriate based on system resources. Approved non-criminal justice agencies may have access to ILETS information on a limited basis (for example, motor vehicle information only) as authorized by the board. (3-30-01)(____)

018. USER ACCESS FEES.

01. Payment Of Fees Required. Any agency that has signed a user agreement with ILETS to have direct terminal or system access to the network must pay access and usage fees as provided in Section 018. (3-13-02)

02. ILETS Network User Access Fees. The access fees approved by the board and to be collected quarterly in advance by the department are as follows: (3-13-02)

a. An agency at the county or municipal level ~~shall~~ pays an annual access fee of four thousand dollars (\$4,000) for each telecommunication line drop to the agency. (3-13-02)(____)

b. An agency at the state, federal, or tribal level ~~shall~~ pays an annual access fee of seven thousand dollars (\$7,000) for each telecommunication line drop to the agency. (3-13-02)(____)

03. Usage Fee. Any agency that has signed a user agreement with ILETS to have direct terminal or system access to the ILETS network ~~must~~ pays quarterly a usage fee based on that agency's percentage of total annual messages sent and received by user agencies through the ILETS message switcher. The total percentage for an agency ~~shall~~ includes the message traffic generated by any other agency authorized to access ILETS through that agency's direct terminal or system access. (3-13-02)(____)

a. The usage fee ~~shall be paid~~ is assessed according to the following schedule:

Percentage of Total ILETS Message Traffic	Annual Usage Fee
0 - .25 %	\$500
.26 - .50 %	\$1,000
.51 - .75 %	\$2,000
.76 - 1.0 %	\$4,000
1.01 - 1.50 %	\$6,000
1.51 - 2.0 %	\$9,000
2.01 - 5.0 %	\$13,500
> 5.01 %	\$20,250

(3-13-02)(____)

b. The department ~~shall will~~ conduct ~~an~~ audits of ILETS message switcher traffic for even-numbered years to determine an agency's annual usage fee, ~~which will be~~ This fee is effective for two (2) years and begins with the quarterly statement for the fee period beginning October 1 of odd-numbered years. (3-13-02)(____)

c. If an agency discontinues direct terminal or system access to ILETS and acquires authorized access through another agency, the usage fee for the agency maintaining direct access ~~shall will~~ be adjusted to reflect the combined historical usage. (3-13-02)(____)

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d. A new agency approved for direct ILETS access that does not have historical usage ~~shall~~ will be assessed ~~by the department~~ an interim usage fee by the department pending the next audit of ILETS message traffic. The department ~~shall~~ sets an interim fee based on the agency's similarities to existing agencies with direct terminal or system access. An agency may appeal ~~to the board~~ the interim usage fee set by the department to the ILETS board.
(3-13-02)(____)

e. As operator of ILETS, the department, in lieu of payment of fees, ~~shall~~ provides direct and in-kind support of network operations. The board ~~shall~~ reviews biennially the proportion of that support to the overall operating cost of the system.
(3-13-02)(____)

04. **Billing And Payment.** The department ~~shall~~ mails billing statements quarterly to all agencies with direct terminal or system access to ILETS. Payment of the fees is due by the first day of the month of each quarter (October 1, January 1, April 1, and July 1), unless it is a Saturday, a Sunday, or a legal holiday, in which event the payment is due on the first successive business day.
(3-13-02)(____)

05. **Sanctions For Delinquency.** Any user agency that becomes delinquent in payment of assessed fees ~~shall be~~ is subject to sanctions under Section 028.
(3-13-02)(____)

019. ADJUSTED ACCESS FEES DURING PILOT PROJECTS.

The board may adjust access fees of user agencies participating in pilot projects being conducted by the department in behalf of ILETS. The fee adjustment ~~shall be~~ is based on any cost savings, actual or anticipated, realized by the ILETS network.
(3-30-01)(____)

020. USER RESPONSIBILITIES.

01. **User Agreement.** Any agency ~~using a terminal to~~ with access to ILETS, whether directly or through another agency, is responsible for adhering to all applicable ILETS rules and policies and must have signed an agreement with ILETS or an interface agency to that effect.
(3-30-01)(____)

02. **Record Validation.** Any agency that enters information into ILETS or NCIC files is responsible for the accuracy, timeliness and completeness of that information. ILETS will send a record validation review list, regularly, to each agency. Validation is accomplished by reviewing the original entry and current supporting documents. Recent consultation with any appropriate complainant, victim, prosecutor, court, motor vehicle registry files, or other appropriate source or individual also is required with respect to the wanted person, missing person, and vehicle files. In the event the agency is unsuccessful in its attempts to contact the victim, complainant, etc., the entering authority must make a determination based on the best information and knowledge available whether or not to retain the original entry in the file. Validation procedures must be formalized and copies of these procedures must be on file for review during an ILETS or NCIC audit. When the agency has completed the validation ~~they must return a signed certification of process, the records must be modified to verify their validity within an appropriate time as established by ILETS~~ no later than thirty (30) days after receiving electronic notification.
(3-30-01)(____)

03. **Minimum Training.** Each agency employee who operates a ~~terminal or~~ computer to access ILETS must complete ILETS training at a level consistent with the employee's duties. Each employee who operates a ~~terminal or~~ computer to access ILETS must be re-certified by the agency every two (2) years ~~per schedules and procedures as prescribed by ILETS~~.
(3-30-01)(____)

04. **Hit Confirmation.** When another agency receives a positive record response (Hit) from ILETS or NCIC and requests confirmation of the status of the record (warrant, stolen vehicle, etc.), the agency responsible for entry of the record must respond within ten (10) minutes for urgent hit confirmation requests or within one (1) hour for routine hit confirmation requests, with an answer ~~indicating~~ that indicates the status of the record or ~~indicating~~ a time frame when the record status will be confirmed.
(3-30-01)(____)

05. **Terminal Agency Coordinators.** The agency administrator of each agency with ~~terminal or~~ computer access to ILETS must designate one (1) or more terminal agency coordinators who ~~shall~~ will be the primary contact(s) for all matters relating to use of ILETS by the agency. A terminal agency coordinator must ~~complete ILETS training at the highest level required by any person in the agency~~ have sufficient authority to implement and enforce

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necessary policy and procedures.

(3-30-01)()

06. Background Checks Of Terminal Operators Required. Policies for access to the FBI-NCIC system require background screening of all terminal operators with access to the NCIC system. For efficiency and consistency, ~~the key elements of~~ the NCIC background screening policies are also adopted for all ILETS access.

(3-30-01)()

021. INFORMATION ACCESS AND DISSEMINATION.

01. General Policy. Information is made available to ILETS users from various sources and agencies, including ILETS and other state justice information system files, motor vehicle departments, NCIC, and NLETS. Each user must observe any restrictions placed on the use or dissemination of information by its source. It is ILETS' responsibility to advise user agencies of any restrictions which apply to any information accessed via ILETS.

(3-30-01)

02. Criminal History Records. Criminal history information ~~on an individual~~ accessed via ILETS from a state or national computerized file ~~shall be made~~ is available only to criminal justice agencies for criminal justice purposes. This precludes the dissemination of such information for use in connection with licensing applications, regulatory activities, or local or state employment, other than with a criminal justice agency.

(3-30-01)()

03. Administrative Messages. An administrative message (AM) is a free text message from one (1) agency to one (1) or more agencies. All administrative messages transmitted via ILETS must be by the authority of an authorized user and must relate to criminal justice purposes or matters of interest to the user community. Administrative messages sent within Idaho, either statewide, regionally or to individual terminal identifiers are subject to the following restrictions:

(3-30-01)

a. No messages supportive or in opposition to political issues, labor management issues, or announcements of meetings relative to such issues.

(3-30-01)

b. No messages supportive or in opposition of legislative bills.

(3-30-01)

c. No requests for criminal history record information.

(3-30-01)

022. -- 023. (RESERVED).

024. ILETS SECURITY.

01. General Policy. The data stored in the ILETS, NCIC, and other criminal justice information system files is documented criminal justice information. This information must be protected to ensure its integrity and its correct, legal and efficient storage, dissemination and use. It is incumbent upon an agency ~~operating an~~ accessing ILETS ~~directly terminal, or a terminal on~~ another system that has access to the ILETS network, to implement the procedures necessary to make the ~~terminal~~ access device secure from any unauthorized use and to ensure ILETS is not subject to a malicious disruption of service. ILETS ~~user~~ access agencies ~~shall~~ must participate in ILETS training and compliance activities to ensure that all agency personnel authorized to access the ILETS network are instructed in the proper use and dissemination of the information and that appropriate agency personnel are aware of security requirements and of the dangers to network integrity. ILETS retains the authority to disconnect ~~a user an~~ access agency or network connection when serious security threats and vulnerabilities are detected.

(3-30-01)()

02. Definitions. The following is a list of terms and their meanings as used in the ILETS security rule:

(3-30-01)

a. Computer interface capabilities means any communication to ILETS allowing an agency to participate in the system ~~using devices other than ILETS provided terminal equipment.~~

(3-30-01)()

b. Firewall means a collection of components placed between two (2) networks that keep the host network secure by having the following properties:

(3-30-01)

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- i. All traffic from inside the network to outside, and vice-versa, must pass through it; (3-30-01)
 - ii. Only authorized traffic is allowed to pass; and (3-30-01)
 - iii. The components as a whole ~~must be~~ are immune to unauthorized penetration and disablement. (3-30-01)()
- c. ILETS ~~Security Officer (ISO)~~ means is the department staff member designated by the executive officer to monitor and enforce agency compliance with site and network security requirements. (3-30-01)()
- d. Peer networks means are computer interfaces between cooperative governmental agencies in Idaho where none of the participating entities exercise administrative or management control over any other participating entity. (3-30-01)()
- e. ~~Primary site means~~ Interface agency is an agency that has management control of a computer system directly connected to ILETS. (3-30-01)()
- f. Untrusted system means is a system that does not employ sufficient hardware or software ~~integrity~~ security measures to allow its use for simultaneously processing a range of sensitive or confidential information. (3-30-01)()
03. ~~Site Security~~ Interface Agency Agreements. To ensure agencies having computer interface capabilities to ILETS are fully aware of their duties and of the consequences of failure to carry out those duties, a written and binding ~~security agreement shall~~ Interface Agency Addendum must exist between ILETS and all ~~primary sites interface agencies~~. This agreement will clarify that the ~~primary site interface agency~~ is equally responsible for actions by secondary and affiliated systems connected through their site to ILETS. ~~Primary sites Interface agencies must put in place similar subsidiary security agreements with secondary and affiliated systems to protect its network and ILETS. A site security agreement shall be an addendum to the ILETS user agreement.~~ (3-30-01)()
04. **ILETS Security Officer.** The ILETS Security Officer ~~shall be~~ is responsible for the following duties: (3-30-01)()
- a. Disseminating to user agencies copies of ILETS security policies and guidelines; (3-30-01)
 - b. Communicating to user agencies information regarding current perceived security threats and providing recommended measures to address the threats; (3-30-01)
 - c. Monitoring use of the ILETS network either in response to information about a specific threat, or generally because of a perceived situation; (3-30-01)
 - d. Directing ~~an primary site interface agency~~, through its nominated contact, to rectify any omission in its duty of responsibility; (3-30-01)()
 - e. When an agency is unable or unwilling to co-operate, reporting the issue to the executive officer and initiating the procedure for achieving an emergency disconnection; and (3-30-01)
 - f. Provide support and coordination for investigations into breaches of security. (3-30-01)
05. **Agency Security Contacts.** A terminal agency coordinator shall serve as that agency's security contact for ILETS, unless another individual is specifically selected for this purpose and approved by the ILETS Security Officer. ILETS primary sites shall ensure the agency's security contact, or another person or position designated in an incident contingency plan, can be contacted by the ILETS security officer at any time. (3-30-01)
06. **Peer Networks.** The security responsibilities of the operators of peer networks connected to ILETS, with respect to their user organizations, are parallel to those of ILETS user organizations in respect to their individual users. The ILETS Security Officer shall ensure that a written agreement exists between ILETS and an

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~~primary site~~ interface agency, signed by the agency heads, that embodies these principles. (3-30-01)()

07. Physical Security Standards. ~~User~~ Interface agencies will observe standards and procedures to ensure security of the physical premises and computing equipment. The minimum standards and procedures include the following: (3-30-01)()

a. Access to computer rooms will be limited to staff who require access for the normal performance of their duties. (3-30-01)

b. Electrical power protection devices to suppress surges, reduce static, and provide battery backup in the event of a power failure will be used as necessary. (3-30-01)

c. Computer system backups shall be stored in a secure location with restricted access. (3-30-01)

d. Network infrastructure components will be controlled with access limited to ~~only~~ support personnel with a demonstrated need for access. (3-30-01)()

e. Physical labeling of infrastructure components will be done to assist in proper identification. Additionally, all components will be inventoried at regular intervals for asset management and physical protection. (3-30-01)

f. An interface agency must create and enforce a password policy in which the agency is responsible for assigning ILETS users a unique password. The password policy must require that a new password be initiated by the user or agency every ninety (90) days. ()

08. Network Security Standards. User agencies ~~shall~~ must exercise appropriate security precautions when connecting ILETS and computer systems linked to ILETS with external untrusted systems. The primary objective of such precautions is to prevent unauthorized access to sensitive information while still allowing authorized users free access. The minimum standards and procedures include the following: (3-30-01)()

a. Agencies ~~shall~~ must routinely audit for and remove unused or unneeded services/accounts, review accounts periodically, and enforce aggressive and effective password strategies. (3-30-01)()

b. Agencies ~~shall~~ must ensure that the software security features of the networks they manage are installed and functioning correctly. (3-30-01)()

c. Agencies ~~shall~~ must monitor network security on a regular basis. Adequate information concerning network traffic and activity ~~will~~ must be logged to ensure that breaches in network security can be detected. (3-30-01)()

d. Agencies ~~shall~~ must implement and maintain procedures to provide the ILETS network adequate protection from intrusion by external and unauthorized sources. (3-30-01)()

e. No computer connected to the network can have stored, on its disk(s) or in memory, information that would permit access to other parts of the network. For example, scripts used in accessing a remote host may not contain passwords. (3-30-01)

f. No connection to ILETS may be established utilizing dial-up communications. Asynchronous communications connections should be limited and tightly controlled as they pose a serious risk because they can circumvent any security precaution enacted to protect networks from untrusted sources. (3-30-01)

g. Network management protocols ~~shall~~ must be limited to internal or trusted networks. (3-30-01)()

h. Any system having direct or indirect access to the Internet via their computer network ~~shall~~ must have in place services that allow no access to ILETS from the Internet. Organizations with large distributed Wide Area Networks connecting many remote sites may choose to incorporate many security layers and a variety of

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strategies. These strategies ~~shall~~ must incorporate the implementation of a firewall to block network traffic, and restriction of remote user access. (3-30-01)()

i. Agencies accessing ILETS directly or through another agency, must insure that all telecommunications infrastructure meets the FBI CJIS Security Policy for encryption standards. ()

i. No routing or IP Network Translations are to be performed on individual access devices. All routing and translation must be performed on a router or firewall device. ()

025. -- 027. (RESERVED).

028. USER AGENCY SANCTIONS.

01. Review Of Violations. The board ~~shall~~ reviews violations of ILETS rules and may impose appropriate sanctions on ~~user~~ access agencies. (3-30-01)()

02. Objective Of Sanctions. The objectives of the sanction procedure ~~shall be~~ are as follows: (3-30-01)()

a. To ensure the security, integrity, and financial stability of the ILETS. (3-30-01)

b. To create an awareness among ~~user~~ access agencies of the importance of following rules, regulations, and procedures in order to minimize the risk to liabilities that may be incurred by misuse of the system and access to its information. (3-30-01)()

03. Class Of Sanctions. Sanctions ~~shall be~~ are based upon the class of violation, any previous violations, and any exposure to criminal and civil liabilities that the violation might place on the system, its officials, and the offending agency. Violations ~~shall be~~ are classed as either administrative (minor) or security (serious) violations. Security violations ~~being~~ are defined as ones which ~~has~~ have or could result in access of ILETS data by unauthorized individuals. All other violations are classed as administrative. (3-30-01)()

04. Form Of Sanctions. When imposing sanctions, the board ~~shall~~ considers the severity of the violation, the violation type, either administrative or security, and previous sanctions issued, ~~if any~~. The board may impose as sanctions one (1) or more of the following: (3-30-01)()

a. Written warning. (3-30-01)

b. Written notice of violation. (3-30-01)

c. Written notice of probation. (3-30-01)

d. Written notice of temporary suspension. (3-30-01)

e. Written notice of permanent suspension. (3-30-01)

05. Effective Date Of Sanctions. Temporary or permanent suspension of service will not begin, unless an emergency exists, until fifteen (15) days after the agency head has received written notice by certified mail or personal service. (3-30-01)

06. Reinstatement. An agency placed on permanent suspension may apply to the board for reinstatement. (3-30-01)

029. -- 999. (RESERVED).

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IDAPA 11 - IDAHO STATE POLICE

11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO. 11-1101-0301

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 19-5107, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the September 3, 2003 Idaho Administrative Bulletin, Volume 03-9, pages 92 through 94.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael N. Becar at (208) 884-7251.

DATED this 24th day of September, 2003.

Michael N. Becar
Executive Director
Idaho State Police / Peace Officer Standards and Training
700 S. Stratford Dr.
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7251 / (208) 884-7295 (FAX)

IDAPA 11, TITLE 11, CHAPTER 01

RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-9, September 3, 2003, pages 92 through 94.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

2004 - Judiciary Rules Senate Pending Rule (Yellow)

IDAPA 11 - IDAHO STATE POLICE

11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO. 11-1101-0301

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is December 5, 2002.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 19-5107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The temporary rule establishes the minimum standards for employment that juvenile probation officers must meet in order to qualify for mandatory certification. In addition, it has been found that more information is needed from applicants in reference to their vision.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The temporary rule is necessary to protect the public health, safety, or welfare.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Michael N. Becar at (208) 884-7251.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 2003.

DATED this 9th day of July, 2003.

Michael N. Becar
Executive Director
Idaho State Police
Peace Officer Standards and Training
700 S. Stratford Dr.
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7251
(208) 884-7295 (Fax)

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1101-0301

057. PHYSICAL - MEDICAL.

01. Requirements.

(7-1-93)

a. Hearing. The applicant ~~shall~~ must have unaided or aided hearing between zero (0) and twenty-five (25) decibels for each ear at the frequencies of five-hundred (500) Hz, one thousand (1000) Hz, two thousand (2000) Hz, and three thousand (3000) Hz. Waiver to the above may be considered by the Council if accompanied by an audiologist's or ear, nose, and throat physician's certification that the applicant's condition ~~would~~ will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, ~~or~~ juvenile detention, or juvenile probation officer. ~~(3-15-02)~~(12-5-02)T

b. Vision.

(7-1-93)

i. The applicant ~~shall~~ must possess normal binocular coordination; depth of proficiency of a minimum of one (1) minute of arc at twenty (20) feet; peripheral vision ~~shall~~ must be binocularly two hundred (200) degrees laterally with sixty (60) degrees upward and seventy (70) degrees downward. There ~~shall~~ must be no pathology of the eye; applicant ~~shall~~ must possess a minimum seventy percent (70%) proficiency of the Dvorine or equivalent color discrimination test. Waiver to the above may be considered by the Council if accompanied by a vision specialist's certification that the applicant's condition ~~would~~ will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, ~~or~~ juvenile detention, or juvenile probation officer. ~~(3-15-02)~~(12-5-02)T

ii. The applicant ~~shall~~ must have uncorrected vision in each eye of twenty/two hundred (20/200) with the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). An applicant who wears contact lenses is exempt from the uncorrected vision of twenty/two hundred (20/200), but ~~shall~~ must have the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). A full eye examination must be administered by an optometrist or ophthalmologist to any applicant whose uncorrected vision in either eye is twenty/one hundred fifty (20/150) or worse. Waiver to the above may be considered by the Council if accompanied by a vision specialist's certification that the applicant's condition ~~would~~ will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, ~~or~~ juvenile detention, or juvenile probation officer. ~~(3-15-02)~~(12-5-02)T

c. Disease/Condition. The applicant ~~shall~~ must be free from any impediments of the senses; of sight, hearing, taste, smell, and touch; physically sound; well developed physically and in possession of his extremities; free from any physical defects, chronic or organic diseases, organic or functional conditions, or emotional or mental instabilities which may tend to impair efficient performance of duty or which might endanger the lives of others or the life of the officer. Waiver to a physical defect may be considered by the Council upon the applicant's demonstration that the defect does not jeopardize or impair his ability to perform the duties of a peace, detention, ~~or~~ juvenile detention, or juvenile probation officer. ~~(3-15-02)~~(12-5-02)T

d. Agency Physical Agility/Fitness Test. To determine the applicant's physical capability, a physical agility or fitness test based upon the job requirements of the appointing agency ~~shall~~ must be administered by the appointing agency to each applicant. ~~(3-15-02)~~(12-5-02)T

02. Procedures.

(7-1-93)

a. A POST Council-approved medical history form ~~shall~~ must be supplied by each applicant to the examining physician. The medical history ~~shall~~ must include information on past and present diseases, injuries and operations. ~~(3-15-02)~~(12-5-02)T

b. A medical examination ~~shall~~ must be administered by a licensed physician or his designee to determine if the applicant is free from any physical, emotional, or mental condition which might adversely affect the

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applicant's ability to perform the duties of a peace, detention, ~~or~~ juvenile detention, or juvenile probation officer. The physician ~~shall~~ must record his findings on the appropriate form or letter and ~~shall~~ must note thereon, for evaluation by the appointing authority, any past or present physical defects, diseases, injuries, operations or conditions of an abnormal or unusual nature, or indications of mental or emotional instability. ~~(3-15-02)~~(12-5-02)T

(BREAK IN CONTINUITY OF SECTIONS)

071. BASIC TRAINING ACADEMY.

Each and every peace, detention, juvenile detention, and juvenile probation officer ~~shall~~ must successfully complete the respective POST Basic Training Academy, including the field training portion, within twelve (12) months from the date of their appointment as a full-time officer. This time period includes probationary time. ~~(4-2-03)~~(12-5-02)T

01. Closed Campus. The POST Basic Training Academies will operate as a closed campus Monday through Thursday. The POST Council may consider an exemption to this requirement in the case of a documented severe financial hardship for the applicant where no other alternative exists and provided the applicant's agency head files a written request for review with the POST Council. A trainee granted a hardship exemption will be required to attend all mandatory classes, and must not be late to any class. Unauthorized lateness to or absence from any class will be grounds for revocation of the hardship exemption by the POST Executive Director. (12-5-02)T

~~042.~~ Attendance. Attendance ~~shall~~ must be required of each trainee at all classes in the Basic Training Academy. A trainee who is absent for more than one (1) day of the academy session ~~shall~~ must make up such course content. ~~(7-1-93)~~(12-5-02)T

~~023.~~ Completion. A trainee ~~shall~~ must successfully complete the Basic Training Academy within six (6) months of the date they enroll in such course. In a case of delay of more than six (6) months, the entire course ~~shall~~ must be repeated. ~~(3-15-02)~~(12-5-02)T

~~034.~~ Field Training. The field training portion ~~shall~~ must be completed to be eligible for certification. ~~(3-15-02)~~(12-5-02)T

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IDAPA 21 - DIVISION OF VETERANS SERVICES

21.01.01 - RULES GOVERNING ADMISSION, RESIDENCY, AND MAINTENANCE CHARGES IN IDAHO STATE VETERANS HOMES AND DIVISION OF VETERANS SERVICES ADMINISTRATIVE PROCEDURES

DOCKET NO. 21-0101-0301

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 65-202, 65-204, and 65-907, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change. To change certain eligibility requirements for residency in State Veterans Homes to comply with Medicaid requirements; to change certain rules related to the conduct of residents who reside in State Veterans Homes and the penalties for such conduct deleting all references to "restricting" residents; to clean up sections related to monthly charges; to change the notification of discharge time for nursing care residents from 15 to 30 days and to perform general clean up.

There is no change between the text of the proposed rule and the text of the pending rule. The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 1, 2003 Idaho Administrative Bulletin, Volume 03-10, pages 337 through 346.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Richard W. Jones, Administrator, (208) 334-3513.

DATED this 23rd day of October, 2003.

Richard W. Jones, Administrator
Idaho Division of Veterans Services
320 Collins Road, Boise, Idaho 83702
Phone: (208) 334-3513 / Fax: (208) 334-2627

IDAPA 21, TITLE 01, CHAPTER 01

RULES GOVERNING ADMISSION, RESIDENCY, AND MAINTENANCE CHARGES IN IDAHO STATE VETERANS HOMES AND DIVISION OF VETERANS SERVICES ADMINISTRATIVE PROCEDURES

There are no substantive changes from the proposed rule text.

**The complete text of the proposed rule was published in the Idaho Administrative
Bulletin, Volume 03-10, October 1, 2003, pages 337 through 346.**

**This rule has been adopted as a pending rule by the Agency and is now pending
review and approval by the 2004 Idaho State Legislature as a final rule.**

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IDAPA 21 - DIVISION OF VETERANS SERVICES

21.01.01- RULES GOVERNING ADMISSION, RESIDENCY, AND MAINTENANCE CHARGES IN IDAHO STATE VETERANS HOMES AND DIVISION OF VETERANS SERVICES ADMINISTRATIVE PROCEDURE

DOCKET NO. 21-0101-0301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section(s) 65-202, 65-204, and 66-907, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

Changes are being made to comply with changes made to the federal Medicaid regulations and to do general clean up of the rules.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes being made conform to changes in federal Medicaid regulations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OR WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Richard W. Jones at (208) 334-3513.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 11th day of August 2003.

Richard W. Jones, Administrator
Idaho Division of Veterans Services
320 Collins Road, Boise, Idaho 83702
Telephone: (208) 334-3513 / FAX (208) 334-2627

THE FOLLOWING IS THE TEXT OF DOCKET NO. 21-0101-0301

100. ELIGIBILITY REQUIREMENTS.

An applicant/resident must be a veteran of the armed forces and must satisfy the following requirements, pursuant to Sections 66901 and 66907, Idaho Code: (3-30-01)

01. Idaho Residency. The applicant must be a bona fide resident of the state of Idaho at the time of admission to a Home. (3-30-01)

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DIVISION OF VETERANS SERVICES

Docket No. 21-0101-0301

Admission, Residency & Maintenance Charges/Administrative Procedures Proposed Rulemaking

02. Incompetent Applicants. Applicants who are considered incompetent must provide copies of guardianship or power of attorney. (3-30-01)

03. Necessity Of Required Services. Applicants must meet the requirements for the level of care for which they apply. (3-30-01)

a. Nursing Care. To be eligible to receive nursing care in a state veterans home, applicants must be referred by a VA physician or a physician currently licensed by the Idaho Board of Medicine to practice medicine or surgery in the state of Idaho. (3-30-01)

b. Residential Care. Each applicant must submit to a physical examination performed ~~at the VA Medical Center or by the clinical specialist assigned to a Home~~ by a licensed physician and meet the physical limitation requirements for residential care. The applicant must be unable to earn a living and have no adequate means of support due to wounds, old age, or physical or mental disabilities. However, each residential care resident must ambulate independently or with the aid of a wheelchair, walker, or similar device and be capable of performing at the time of admission, and for the duration of his residency, all of the following with minimal assistance: (3-30-01)(____)

- i. Making his bed daily; (3-30-01)
- ii. Maintaining his room in a neat and orderly manner at all times; (3-30-01)
- iii. Keeping all clothing clean through proper laundering; (3-30-01)
- iv. Observing cleanliness in person, dress and living habits and dressing himself; (3-30-01)
- v. Bathing or showering frequently; (3-30-01)
- vi. Shaving daily or keeping his mustache or beard neatly groomed; (3-30-01)
- vii. Proceeding to and returning from the dining room and feeding himself; (3-30-01)
- viii. Securing medical attention on an ambulatory basis and managing medications; (3-30-01)
- ix. Maintaining voluntary control over body eliminations or control by use of an appropriate prosthesis; and (3-30-01)
- x. Making rational decisions as to his desire to remain or leave the Home. (3-30-01)

c. Domiciliary Care. Each applicant must submit to a physical examination performed ~~at the VA Medical Center or by the clinical specialist assigned to a Home~~ by a licensed physician and meet the physical limitation requirements for domiciliary care. The applicant must be unable to earn a living and have no adequate means of support due to wounds, old age, or physical or mental disabilities. However, each domiciliary care resident must be able to ambulate independently and must be capable of performing at the time of admission, and for the duration of his residency, all of the following without assistance: (3-30-01)(____)

- i. Making his bed daily; (3-30-01)
- ii. Maintaining his room in a neat and orderly manner at all times; (3-30-01)
- iii. Keeping all clothing clean through proper laundering; (3-30-01)
- iv. Observing cleanliness in person, dress and living habits and dressing himself; (3-30-01)
- v. Bathing or showering frequently; (3-30-01)

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- vi. Shaving daily or keeping his mustache or beard neatly groomed; (3-30-01)
- vii. Proceeding to and returning from the dining room and feeding himself; (3-30-01)
- viii. Securing medical attention on an ambulatory basis and managing medications; (3-30-01)
- ix. Maintaining voluntary control over body eliminations or control by use of an appropriate prosthesis; and (3-30-01)
- x. Making rational and competent decisions as to his desire to remain or leave the Home. (3-30-01)

04. Placement Restriction. A Home shall not accept applicants or continue to extend care to residents for whom the facility does not have the capability or services to provide an appropriate level of care. (3-30-01)

05. Financial Statement. Each applicant must file a signed, dated statement with the Home Administrator containing a report of income from all sources and a report of all liquid assets which will be used to determine the amount of the maintenance charge which is required in accordance with Section 66907, Idaho Code, and IDAPA 21.01.01, "Rules Governing Admission, Residency, and Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure". (3-30-01)

06. Social Security Benefits. If eligible for Social Security benefits, the applicant/resident and spouse must apply for those benefits unless waived by the Home Administrator. (3-30-01)

07. Medicare Coverage. If eligible for Medicare parts "A" and "B", the applicant/resident must elect to participate, unless participation is waived by the Home Administrator. (3-30-01)

08. Income Limitation. (3-30-01)

a. Nursing Care. None. (3-30-01)

b. Residential and Domiciliary Care. An applicant whose total monthly net income, at the time of his application for residency, exceeds the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95588 divided by twelve (12) cannot be admitted unless granted a waiver by the Home Administrator. This waiver must include a statement from a VA Medical Center physician indicating the veteran is in "need of continuing medical care". (3-30-01)

09. VA Pension - Nursing Care. Unless waived by the Home Administrator, a wartime veteran, as defined in 5 U.S.C. Section 2108, who is a nursing care applicant/resident must be eligible for, apply for, and/or be in receipt of a VA disability pension in accordance with Public Law 95588. Such waivers may be considered only when the applicant/resident has signed a statement indicating he is unable to defray the necessary expenses of the medical care for which he is applying and arrangements are made to secure medical services not provided by VA. (5-3-03)

10. Agreements For Behavior And Care Needs. The Idaho State Veterans Homes may require that applicants or residents enter into agreements concerning the applicant or resident's behavior and/or care needs while residing in the Home. The resident's failure to perform these agreements is a basis for discharge from the Home. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

300. CONDUCT OF RESIDENTS.

Each resident must comply with applicable rules in this Chapter and with any order or directive of the Home Administrator. All complaints made by the residents concerning food, quarters, ill treatment, neglect, abusive language, or other violations of any rule or standard applicable to the Home, or complaints against the operation of a Home may be made either verbally or in writing to the Home Administrator. (3-30-01)

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01. No Operation Of Motor Vehicles By Nursing ~~And Residential~~ Care Residents. The operation or storage of privately owned motor vehicles by nursing ~~and residential~~ care residents is prohibited on Home property.

(3-30-01)(____)

02. Operation Of Motor Vehicles By Domiciliary And Residential Care Residents. Each authorized domiciliary and residential care resident who drives a motor vehicle onto the grounds of a Home must adhere to the following:

(3-30-01)(____)

a. Requirements: (3-30-01)

i. Must possess a valid driver's license; (3-30-01)

ii. Vehicle must have a current motor vehicle registration; (3-30-01)

iii. Operator must be insured against liability and property damage in accordance with Idaho law; and (3-30-01)

iv. Must park only in assigned spaces. (3-30-01)

b. Prohibitions. Nonoperable motor vehicles and motor vehicle repairs are not permitted on the grounds of a Home. (3-30-01)

03. Housekeeping. (3-30-01)

a. Housekeeping services for nursing care residents shall be provided by the Home. (3-30-01)

b. Each residential and domiciliary care resident must adhere to the following requirements (residential care residents may need minimal assistance): (3-30-01)

i. Making his bed daily; (3-30-01)

ii. Maintaining his room in a neat and orderly manner at all times; and (3-30-01)

iii. Assuring that all clothing is appropriately marked, stored and kept clean through proper laundering. (3-30-01)

c. All residents are prohibited from: (3-30-01)

i. Washing clothes or other articles which present a health or safety hazard in resident rooms or bathrooms; (3-30-01)

ii. Using electrical devices, including televisions, radios, recorders, and shavers, until they have been certified by Home maintenance staff as being safe for use; (3-30-01)

iii. Entering the kitchen, laundry, shop or mechanical spaces without permission; and (3-30-01)

iv. Interfering or tampering with the heating, refrigeration or air conditioning systems, televisions, lighting, appliances, plumbing, or mechanical equipment at the Home without authorization. (3-30-01)

04. Personal Conduct. Each resident must adhere to the following: (3-30-01)

a. Requirements: (3-30-01)

i. Observing cleanliness in person, dress and in living habits; (3-30-01)

ii. Bathing or showering frequently; (3-30-01)

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- iii. Observing the smoking policies of a Home; (3-30-01)
- iv. Residential and domiciliary care residents must retire to a recreation area or utilize an individual bed light if desiring to read between 10 p.m. and 6:30 a.m. during which time all room overhead lights are turned off; (3-30-01)
- b. Prohibitions: (3-30-01)
 - i. Creating a disturbance or using intoxicating beverages or nonprescribed controlled substances in the buildings or on the grounds (unless prescribed by a physician); (3-30-01)
 - ii. Marking or writing on the walls of a building, or damaging the grounds or any other property; (3-30-01)
 - iii. Using profanity or exhibiting vulgar behavior in the Home or in any other public place; (3-30-01)
 - iv. Becoming involved in quarrels, persistent dissension or criticism of others; (3-30-01)
 - v. Lending money to, or borrowing money from, another resident or an employee of the Home; (3-30-01)
 - vi. Smoking in an unauthorized area; (3-30-01)
 - vii. Taking food (other than fresh fruit for consumption within a reasonable time period), condiments, dishes or utensils from the dining room; (3-30-01)
 - viii. Cooking or using heating devices in residents' rooms or other unauthorized areas; (3-30-01)
 - ix. Storing flammable or combustible material including, but not limited to, gasoline, butane, solvents, and acetone on Home grounds. (3-30-01)

301. -- 349. (RESERVED).

350. ~~PENALTIES~~ FOR RESIDENTIAL AND NURSING CARE RESIDENTS.

Upon determination that a resident has failed to comply with an order or rule of a Home or the Division, the Home Administrator must notify the resident, in writing, of pending disciplinary action which can include discharge for a period to be determined by the Home Administrator, if: ~~(3-30-01)()~~

01. Discharge An Emergency Exists. ~~A resident may be discharged from the Home for a period of time to be determined by the Home Administrator:~~ ~~(3-30-01)~~

~~a.~~ Upon determination by the Home Administrator that an emergency exists, a resident may be immediately discharged. ~~(3-30-01)()~~

~~b~~02. Certain Acts are Committed. ~~If~~ The Home Administrator determines that a resident has committed one (1) or more of the following acts, the resident ~~will~~ may be given notice in accordance with Subsection 982.03 and ~~after fifteen (15) days~~ discharged from the Home: ~~(3-30-01)()~~

- ~~a.~~ Possession of a lethal weapon of any kind or possession of wine, beer, liquor, controlled substance or medication unless prescribed by the resident's primary care physician; (3-30-01)
- ~~b.~~ Excessive or habitual intoxication; (3-30-01)
- ~~c.~~ Disturbing the peace; (3-30-01)
- ~~d.~~ Striking or threatening another person; (3-30-01)

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- ~~v~~e. Willful destruction or wrongful appropriation of state or another person's property; (3-30-01)
- ~~v~~i. Commission of a felony; (3-30-01)
- ~~v~~ii. Abusive language or gestures or intentional assault or battery; (3-30-01)
- ~~v~~iii. Willful disobedience or persistent violations of Home rules; (3-30-01)
- ~~i~~x. Refusal or failure to pay established charges (see Sections 880 through 980); (3-30-01)
- ~~x~~i. Any pattern of behavior that infringes upon the rights of another person; (3-30-01)
- ~~x~~ii. Unauthorized absences from the Home. (3-30-01)

~~02. Restriction.~~ *A resident may be restricted to the Home for a period of time to be determined by the Home Administrator.* (3-30-01)

351. ~~PENALTIES~~ **PENALTIES FOR DOMICILIARY RESIDENTS.**

Upon determination that a resident has failed to comply with an order or rule of a Home or the Division, the Home Administrator must notify the resident, in writing, of pending disciplinary action which can include immediate discharge for a period to be determined by the Home Administrator, if: (3-30-01)()

~~01. Discharge An Emergency Exists.~~ *A resident may be discharged from the Home for a period of time to be determined by the Home Administrator. Upon determination by the Home Administrator that an emergency exists, a resident may be immediately discharged.* (3-30-01)()

~~02. Certain Acts Are Committed.~~ If the Home Administrator determines that a domiciliary resident has committed one (1) or more of the following acts, the resident will be given notice in accordance with Subsection 982.03 and immediately discharged from the Home. (3-30-01)()

~~a.~~ Possession of wine, beer, liquor, controlled substance or medication unless prescribed by the resident's primary care physician, or a lethal weapon of any kind in the Home; (3-30-01)()

- ~~ii~~b. Excessive intoxication; (3-30-01)
- ~~ii~~c. Disturbing the peace; (3-30-01)
- ~~i~~d. Striking or threatening another person; (3-30-01)
- ~~v~~e. Willful destruction or wrongful appropriation of state or another person's property; (3-30-01)
- ~~v~~i. Commission of a felony; (3-30-01)
- ~~v~~ii. Abusive language or gestures, assault or battery. (3-30-01)

~~03. Acts For Which Notice Of Discharge May Be Given.~~ The resident ~~will~~ may be given notice of his eventual discharge in accordance with Subsection 982.03 for any of the following acts: (3-30-01)()

- ~~a.~~ Habitual intoxication; (3-30-01)
- ~~ii~~b. Willful disobedience or persistent violations of Home rules; (3-30-01)
- ~~ii~~c. Refusal or failure to pay established charges (see Sections 880 through 980); (3-30-01)
- ~~i~~d. Any pattern of behavior that infringes upon the rights of another person; (3-30-01)

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~~99.~~ Unauthorized absences. (3-30-01)

~~02. Restriction. A resident may be restricted to the Home for a period of time to be determined by the Home Administrator. (3-30-01)()~~

(BREAK IN CONTINUITY OF SECTIONS)

950. FINANCIAL GROUNDS FOR REJECTION OR DISCHARGE.

The following circumstances may be considered as grounds for rejection of an application for residency or for revocation of residency and subsequent discharge. (When an application is rejected or a resident discharged, the applicant/resident will be given written notification of his intended application rejection or his discharge, in accordance with the provisions in Subsection 982.03.) (3-30-01)

01. Disposal Of Assets. If the Home Administrator determines that an applicant/resident has disposed of assets following or within ~~one thirty-six (36) year~~ months preceding initial application for residency, which would have the effect of reducing his maintenance charge, such action can lead to rejection of the application or discharge from a Home. (3-30-01)()

02. Failure To Pay Maintenance Charge. Refusal or failure to pay the established maintenance charge can be cause for discharge from a Home. If the resident is so discharged, or leaves a Home voluntarily, he will not be eligible for readmission to a Home until all indebtedness to the Home is paid in full, or acceptable arrangements have been made with the Home Administrator for repayment. (3-30-01)

03. Failure To Pay For Services. (3-30-01)

a. Residents who are excluded from receiving free services from a VA Medical Center may elect to purchase such services through a sharing agreement or contract between a Home and a VA Medical Center or an outside provider when such sharing agreement or contract exists. In those cases where sharing agreement or contract costs are borne by a Home, the resident must reimburse the Home for the costs of services provided. (3-30-01)

b. Failure to reimburse a Home or a service provider within ten (10) days after receipt of a bill for services provided under a sharing agreement or contract may result in a resident's discharge from the Home. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

980. MONTHLY CHARGES AND ALLOWANCES.

01. Nursing Care. Pursuant to Section 66907, Idaho Code, maximum monthly charges and allowances are established by the Division Administrator with the advice of the Commission. A schedule of charges and allowances will be available in the business office of each Home. Charges and allowances will be reviewed from time to time by the Division Administrator and the Commission. (3-30-01)

a. Changes to Charges and Allowances. Members of the public may comment on proposed changes at meetings of the Commission when changes are considered. (3-30-01)

b. Notification and Posting. When changes are made to charges or allowances, residents and/or their families or sponsors will receive written notification and changes will be posted in the business office of each Home a minimum of thirty (30) days prior to the effective date of the change. (3-30-01)

02. Residential And Domiciliary Care. Pursuant to Section 66907, Idaho Code, maximum monthly charges and allowances are established by the Division Administrator with the advice of the Commission. A schedule

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of charges and allowances will be available in the business office of the ~~Boise~~ Veterans Homes. Allowances will be reviewed from time to time by the Division Administrator and the Commission. ~~(3-30-01)~~(____)

a. Changes to Charges and Allowances. Pursuant to Subsections 915.05.b. and 915.05.c., monthly charges for residential and domiciliary care will be adjusted automatically when a change is made to the current maximum annual rate of VA pension for a single veteran pursuant to Public Law 95588 divided by twelve (12). Relative to monthly allowances, members of the public may comment on proposed changes at meetings of the Commission when changes are considered. (3-30-01)

b. Notification and Posting of Changes to Allowances. When changes are made to allowances, residents or their families or sponsors will receive written notification, and changes will be posted in the business office of the ~~Boise~~ Veterans Homes a minimum of thirty (30) days prior to the effective date of the change. ~~(3-30-01)~~(____)

981. APPEAL PROCEDURE.

Upon notification to a resident of ~~restriction to or~~ discharge from a Home by the Home Administrator, the resident may request a hearing in accordance with the provisions in Section 982, "Provisions for Contested Cases". Any additional violation of Home rules by a resident while on notice for disciplinary action will be treated independent of any pending appeal. ~~(3-30-01)~~(____)

982. PROVISIONS FOR CONTESTED CASES.

01. Inapplicability Of Idaho Rules Of Administrative Procedure Of The Attorney General. All contested cases shall be governed by the provisions of these rules. The Veterans Affairs Commission and Administrator of the Division of Veterans Services find that the provisions of IDAPA 04.11.01.000, et seq., Idaho Rules of Administrative Procedure of the Attorney General, are inapplicable and inappropriate for contested cases before the Veterans Affairs Commission, because of the specific and unique requirements of federal and state law regarding notices, hearing processes, procedural requirements, time lines, and other provisions requiring the Division to adopt its own procedures pursuant to Section 675206(5)(b), Idaho Code, and hereby affirmatively promulgate and adopt alternative procedures and elect not to be governed by any of the provisions of IDAPA 04.11.01.000, et seq., "Idaho Rules of Administrative Procedure of the Attorney General". (3-30-01)

02. Hearing Rights. Through compliance with these rules, residents and applicants have the following rights to a hearing: (3-30-01)

a. If a resident of a Home is notified of pending disciplinary action, including ~~restriction or~~ discharge, the resident will be afforded an opportunity for a hearing with the Veterans Affairs Commission. A resident of a Home must attempt to resolve the violations stated on the notice of action through verbal discussions with the Home Administrator or his designee prior to submission of a written request for a hearing before the Commission. ~~(3-30-01)~~(____)

b. If an application for residency in a Home is rejected, the applicant may request a hearing before the Veterans Affairs Commission. (3-30-01)

c. If an application for emergency relief is denied, the applicant may request a hearing before the Veterans Affairs Commission. (3-30-01)

03. Notice Of Action. The Home Administrator or his designee must notify the applicant/resident of any action to be taken regarding rejection of an application or ~~restriction to or~~ discharge from a Home. ~~(3-30-01)~~(____)

a. The notice of intended action must be in writing. (3-30-01)

b. The notice must state the following: (3-30-01)

i. The reason for the impending action and a reference to the pertinent rules under which the action is being brought or decision has been made; (3-30-01)

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- ii. The effective date of the action; (3-30-01)
- iii. The applicant's/resident's right to request a hearing according to the provisions in Section 982; and (3-30-01)
- iv. The procedure for requesting a hearing before the Commission, as provided in Subsection 982.05. (3-30-01)
- c. The following notification deadlines are established for Domiciliary Care only: (3-30-01)
 - i. ~~Restriction or d~~ Discharge notices must be sent to the resident three (3) days prior to the intended effective date of the action, except under the conditions noted in Subsection 351.01.~~a.~~ ~~(3-30-01)~~()
 - ii. Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. (3-30-01)
- d. The following notification deadlines are established for Residential Care only: (3-30-01)
 - i. ~~Restriction or d~~ Discharge notices must be sent to the resident fifteen (15) days prior to the intended effective date of the action, except under the conditions noted in Subsection 350.01.~~a.~~ ~~(3-30-01)~~()
 - ii. Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection.(3-30-01)
- e. The following notification deadlines are established for Nursing Care only: (3-30-01)
 - i. ~~Restriction or d~~ Discharge notices must be sent to the resident ~~fifteen (15)~~ thirty (30) days prior to the intended effective date of the action, except under the conditions noted in Subsection 350.01.~~a.~~ ~~(3-30-01)~~()
 - ii. Notification of findings of ineligibility for residency will be mailed to the applicant within three (3) working days after receipt of the completed application citing the reasons for rejection. (3-30-01)
- 04. Notice Of Denial Of Emergency Relief.** The Veterans Services Program Supervisor or his designee must notify the applicant of the denial of his application for emergency relief. (3-30-01)
 - a. The notice of denial must be in writing. (3-30-01)
 - b. The notice must state the following: (3-30-01)
 - i. The reason for denial and a reference to the pertinent rules under which the denial was made; and (3-30-01)
 - ii. The applicant's right to request a hearing according to the provisions in these rules; and (3-30-01)
 - iii. The procedure for requesting a hearing before the Commission, as provided in Subsection 982.05. (3-30-01)
 - c. Notice of denial of emergency relief will be mailed to the applicant within three (3) working days after receipt of the completed application. (3-30-01)
- 05. Requesting A Hearing.** (3-30-01)
 - a. A request for a hearing from a resident or an applicant for residency in an Idaho State Veterans Home must be submitted through the Home Administrator to the Division Administrator for possible resolution or scheduling before the Commission. A resident's request must contain a description of what effort he has taken to satisfy the requirements of Subsection 982.02.a. Any hearing conducted in accordance with these provisions will be

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held during either a regular or special meeting of the Commission. (3-30-01)

b. A request for a hearing from an applicant for emergency relief must be submitted through the Veterans Services Program Supervisor to the Division Administrator for possible resolution or scheduling before the Commission. Any hearing conducted in accordance with these provisions will be held during either a regular or special meeting of the Commission. (3-30-01)

c. A request for a hearing must be in writing and signed by the applicant/resident. (3-30-01)

d. A request for a hearing must be submitted within three (3) days of receipt of the written notice of action or denial. (3-30-01)

e. Pending a hearing, benefits will be continued or held in abeyance as follows: (3-30-01)

i. Benefits for domiciliary care residents will be continued if the hearing request is made before the effective date of action and within three (3) days of receipt of the notice. No action will be taken by the Home Administrator pending receipt of the written decision of the Commission following the hearing, except under the conditions noted in Subsection 351.01.a. (3-30-01)

ii. Benefits for residential care residents will be continued if the hearing request is made before the effective date of action and within three (3) days of receipt of the notice. No action will be taken by the Home Administrator pending receipt of the written decision of the Commission following the hearing, except under the conditions noted in Subsection 350.01.a. (3-30-01)

iii. Benefits for nursing care residents will be continued if the hearing request is made before the effective date of action and within three (3) days of receipt of the notice. No action will be taken by the Home Administrator pending receipt of the written decision of the Commission following the hearing, except under the conditions noted in Subsection 350.01.a. (3-30-01)

iv. Benefits for emergency relief applicants will not be granted until the Commission renders a written decision following the hearing. (3-30-01)

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IDAPA 50 - COMMISSION OF PARDONS AND PAROLE

50.01.01 - RULES OF THE COMMISSION OF PARDONS AND PAROLE

DOCKET NO. 50-0101-0302

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 20-223(a), Title 67, Chapter 52, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any changes between the text of the proposed rule and text of the pending rule.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the June 4, 2003 Idaho Administrative Bulletin, Volume 03-6, pages 88 through 94.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Tracy Shearer, Commission of Pardons and Parole, P.O. Box 83720, 208-334-2520.

DATED this 17th day of November, 2003.

Olivia Craven
Executive Director
Commission of Pardons and Parole
3125 So. Shoshone
P.O. Box 83720
Boise, ID 83720-1807
208-334-2520 (phone)
208-334-3501 (fax)

IDAPA 50, TITLE 01, CHAPTER 01

RULES OF THE COMMISSION OF PARDONS AND PAROLE

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-6, June 4, 2003, pages 88 through 94.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

2004 - Judiciary Rules Senate Pending Rule (Yellow)

IDAPA 50 - COMMISSION OF PARDONS AND PAROLE

50.01.01 - RULES OF THE COMMISSION OF PARDONS AND PAROLE

DOCKET NO. 50-0101-0302

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 4, 2003.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has initiated temporary and proposed rules. The proposed action is authorized pursuant to Section 20-223, Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, public hearings will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 18, 2003.

Any hearing site will be accessible to the physically handicapped. Interpreters for persons with hearing impairments and Braille or taped information for persons with visual impairments can be provided upon five days notice. For arrangements, contact the undersigned at (208) 334-2520.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of the supporting reasons for temporary rulemaking:

Confers a benefit to the State of Idaho and its citizens. Agency rule 50.01.01.250.06 has been revised and expanded to include placing parolees, who meet certain criteria, on unsupervised parole.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226 (1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reason:

Confers a benefit to the State of Idaho and its citizens. Allows a parolee to be on unsupervised parole which saves the state the cost of supervision, while he is monitored for repayment of fines, fees and court ordered restitution.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 25, 2003.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Tracy Shearer, Commission of Pardons and Parole, P.O. Box 83720, Boise, ID 83720, 208-334-2520.

Dated this 1st day of May 2003.

Olivia Craven, Executive Director
Commission of Pardons and Parole
3125 So. Shoshone
P.O. Box 83720
Boise ID 83720-1807
208-334-2520 (phone)
208-334-3501 (fax)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 50-0101-0302

250. PAROLE.

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COMMISSION OF PARDONS AND PAROLE
Rules of the Commission of Pardons and Parole

Docket No. 50-0101-0302
Temporary and Proposed Rule

- 01. Parole Determination.** Parole determination is at the complete discretion of the commission. (3-23-98)
- all. **a.** The commission may release an inmate to parole on or after the date of parole eligibility, or not at (3-23-98)
- b.** Parole consideration is evaluated by the individual merits of each case. (3-23-98)
- c.** The commission allows for parole consideration criteria, but no prediction regarding the granting of parole can be based upon any hearing standard or criteria. (3-23-98)
- i. Seriousness and aggravation and/or mitigation involved in the crime. (3-23-98)
- ii. Prior criminal history of the inmate. (3-23-98)
- iii. Failure or success of past probation and parole. (3-23-98)
- iv. Institutional history to include conformance to established rules, involvement in programs and jobs custody level at time of the hearing, and overall behavior. (3-23-98)
- v. Evidence of the development of a positive social attitude and the willingness to fulfill the obligations of a good citizen. (3-23-98)
- vi. Information or reports regarding physical or psychological condition. (3-23-98)
- vii. The strength and stability of the proposed parole plan, including adequate home placement and employment or maintenance and care. (3-23-98)
- 02. Primary Review.** A review for the purpose of setting the initial parole hearing will be conducted on all inmates, except those serving a court-retained jurisdiction and those inmates sentenced to death; the commission is not responsible for the setting of a hearing until an official sentence calculation sheet has been received. (3-23-98)
- a.** The executive director or a designee will conduct the review following receipt of the sentence calculation from the department of correction, records office. (3-23-98)
- b.** The month and year of the initial parole hearing will be established based upon the sentence calculation. (3-23-98)
- i. In cases of offenses committed prior to February 1, 1987 or offenses committed after February 1, 1987 with no specified fixed minimum term, the following guideline outlined in "Table 1" will be utilized in scheduling the initial hearings.

TABLE 1	
Length Of Sentence	Minimum Time To Be Served Before Initial Hearing
Three (3) years or less	- Nine (9) months
More than three (3) years to less than five (5) years	- Twelve (12) months
Five (5) years to less than seven (7) years	- Fifteen (15) months
Seven (7) years to less than ten (10) years	- Twenty (20) months
Ten (10) years to less than sixteen (16) years	- Twenty-four (24) months

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TABLE 1	
Length Of Sentence	Minimum Time To Be Served Before Initial Hearing
Sixteen (16) years to less than twenty-six (26) years	- Thirty-six (36) months
Twenty-six (26) years up to life sentence	- Forty-eight (48) months
Life sentence	- Sixty (60) months

(3-23-98)

ii. In cases of offenses committed on or after February 1, 1987, and a minimum fixed term has been specified, the initial hearing may be scheduled prior to the parole eligibility date, during the month of parole eligibility, or as noted in Subsection 250.02.b.vi. (3-30-01)

iii. Consecutive Sentences. All fixed terms will be served before the indeterminate terms commence. (3-23-98)

iv. When more than one (1) sentence is being served concurrently, the initial hearing will not be scheduled until all fixed terms have been served. (3-23-98)

v. If an inmate escapes prior to the primary review or the initial hearing, the review or hearing will be conducted within a reasonable time of notification of the inmate's return, taking into consideration any additional commitments. (3-23-98)

vi. If an inmate is committed to the department of correction and such inmate is eligible for parole immediately or within a short period of time, the initial parole hearing will be scheduled six (6) months from the month the commission was notified of the commitment. (4-5-00)

c. The commission is not responsible for the accuracy of the sentence calculation as determined by the department of correction, records office. The commission utilizes the documents as being accurate. (3-30-01)

03. General Conditions Of Parole. The commission establishes rules and conditions for every inmate released to parole, and those conditions are. (3-23-98)

a. Parolee will go directly to the destination approved by the commission and, upon arrival, report as instructed to the parole officer or person whose name and address appear on the arrival notice; any deviation in travel plans will require prior permission from the commission staff. (3-23-98)

b. The parolee shall. (3-23-98)

i. Work diligently in a lawful occupation or a program approved by the commission or supervising officer and not change employment or designated program without written permission from the commission or supervising officer. (3-23-98)

ii. Support dependents to the best of his ability. (3-23-98)

iii. Live within lawful income without incurring unnecessary indebtedness. (3-23-98)

c. The parolee shall submit a complete and truthful report to the assigned parole officer, or other person designated by the commission, on forms available, before the fifth day of each month, or as otherwise instructed. (3-23-98)

d. If at any time it becomes necessary to communicate with the assigned parole officer or other official designee and he is unavailable, communication will be directed to the district supervisor. (3-23-98)

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- e. The parolee will: (3-23-98)
 - i. Obey all municipal, county, state and federal laws. (3-23-98)
 - ii. Conduct himself, in a manner which is not, nor intended to be, harmful to himself or others. (3-23-98)
 - iii. Follow written or oral instructions of the parole officer or commission. (3-23-98)
 - iv. Not purchase, own, sell, or have in his control, to include storing in residence, vehicle, etc., any type of firearm for whatever purpose. (3-23-98)
 - v. Not have any dangerous weapons used or intended to be used for other than normal purposes, such as knives for household use. (3-23-98)
- f. The parolee shall: (3-23-98)
 - i. Abstain from excessive use of alcoholic beverages. (3-23-98)
 - ii. Abstain completely from the possession, procurement, use, or sale of narcotics or controlled substances, except as prescribed by a licensed medical practitioner. (3-23-98)
 - iii. Freely cooperate and voluntarily submit to medical and chemical tests and examinations for the purpose of determining if parolee is using or under the influence of alcohol or narcotics, which may be at the parolee's expense. (3-23-98)
 - iv. Participate in treatment programs as specified by the commission or ordered by the parole officer. (3-23-98)
- g. The parolee will submit to a search of person and/or property, to include residence and vehicle, at any time and place, by any agent of field services or the commission, and he does waive his constitutional right to be free from such searches. (3-23-98)
- h. The parolee is fully advised that written permission is required to: (3-23-98)
 - i. Wilfully change employment; (3-23-98)
 - ii. Wilfully change residence; and (3-23-98)
 - iii. Leave the assigned district. (3-23-98)
- i. The parolee will make himself available for supervision and will not actively avoid supervision. (3-23-98)
- 04. Special Conditions Of Parole.** (3-23-98)
 - a. In addition to general rules of parole, the commission may add special conditions appropriate to the individual case. (3-23-98)
 - b. The commission delegates the authority to the executive director to add special conditions, before an inmate has been released to parole or while on parole, once the subject has signed a statement agreeing to the special conditions. (3-23-98)
- 05. Institutional Parole.** (3-23-98)
 - a. An inmate committed to the department of correction, who has a consecutive sentence and one (1)

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or more commitments do not have a fixed minimum term to serve prior to parole eligibility, may be considered for institutional parole while remaining incarcerated. (3-23-98)

b. Institutional parole may be considered at the discretion of the commission. (3-23-98)

c. While serving institutional parole, the parolee/inmate is subject to all the rules of the housing facility and conditions ordered by the commission, to include, but not be limited to, submitting monthly reports as directed. (3-23-98)

d. If rules of the institution or orders of the commission are violated, the executive director or a commissioner will determine when a report of conduct/violation should be submitted. (3-23-98)

i. In the case of a report of violation, established rules of the violation/revocation process will apply. (3-23-98)

ii. The executive director will determine the site of all hearings. (3-23-98)

iii. If institutional parole is revoked, the time spent on institutional parole may be forfeited in whole or in part, and may not be deemed a part of the sentence for which the offender was committed; however, time served on the consecutive sentence will be credited once that sentence commences to be served. (3-30-01)

e. Conversion. Upon release from custody on any subsequent parole or upon completion of the consecutive sentence, and time remains on the institutional parole sentence, there will be an automatic conversion from institutional parole to regular parole, subject to all regular and special conditions of parole. (3-23-98)

06. Unsupervised Parole. ~~In extraordinary cases, the~~ The commission may elect to grant an unsupervised parole in extraordinary cases; when the parolee has met the minimum discharge requirements but still owes restitution or other court assessments; or if the parolee is medically unable to fulfill the parole obligations. (3-23-98)(6-4-03)T

a. ~~The parolee will be subject to all regular conditions of parole and any ordered special conditions, with the exception of the regular supervision of a parole officer.~~ In extraordinary cases, the commission may elect to grant an unsupervised parole. (3-23-98)(6-4-03)T

i. The parolee will be subject to all regular conditions of parole and any ordered special conditions, with the exception of the regular supervision of a parole officer. (6-4-03)T

ii. Monthly reports may be required at the discretion of community corrections. (6-4-03)T

iii. Communication from the parolee is to be directed to the district office where last supervised, or as otherwise directed after initial contact. (6-4-03)T

iv. At any time, the parolee may be placed under the regular supervision of a parole officer. (6-4-03)T

b. ~~Monthly reports must be submitted to the commission office.~~ The commission may elect to place a parolee, who still owes restitution or other court assessments, on unsupervised parole once the minimum discharge requirements have been met. (3-23-98)(6-4-03)T

i. The parolee must have served at least one (1) year on parole. (6-4-03)T

ii. Monthly payments will be monitored. Such monitoring will usually be accomplished by community corrections. (6-4-03)T

iii. At any time, the parolee may be placed under the regular supervision of a parole officer. (6-4-03)T

c. ~~Communication from the parolee is to be directed to the commission office.~~ If a parolee is medically unable to fulfill the obligations of parole, the commission may suspend any or all parole obligations.

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~~(3-23-98)~~(6-4-03)T

~~d. At any time, the parolee may be placed under regular supervision of a parole officer. (3-23-98)~~

~~e. If a parolee is medically unable to fulfill the obligations of parole, the commission may suspend any or all parole obligations. (3-30-01)~~

07. Medical Parole. The commission may parole an inmate for medical reasons during the determinate portion of a sentence. (3-23-98)

a. An inmate may be considered for medical parole during the determinate portion of a sentence only when the prisoner is permanently incapacitated or terminally ill and when the commission reasonably believes the prisoner no longer poses a threat to the safety of society. (3-23-98)

b. An inmate or designated department of correction personnel may petition the commission to consider medical parole. (3-23-98)

c. For any consideration or hearing to consider medical parole, the commission will require specific medical information reference the condition, the treatment or care plan if released, and any other information as deemed necessary. (3-23-98)

d. The commission may conduct an actual hearing or review of the case, or may designate commission staff to provide additional information. (3-23-98)

e. An annual report will be submitted to the house and senate judiciary committees and will contain the inmates' names, medical condition, current status and crime for which the inmates were incarcerated. (3-23-98)

08. Intensive Supervision. The commission may order a program of intensive supervision which has been designed by and may be amended by the department of correction. (3-23-98)

09. Discharge From Parole. (3-23-98)

a. When the maximum sentence has expired, a final discharge will be issued by the commission, unless a commission warrant was issued before the full term or the good time release date. (3-23-98)

b. The commission may make a final order of discharge prior to completion of the maximum sentence when the commission believes such a discharge is compatible with the parolee's welfare and that of society, and subject to the following requirements. (3-23-98)

i. The commission will not consider an early discharge from parole in any case until the parolee has served at least one (1) year on parole. (3-23-98)

ii. The commission will not consider an early discharge for a parolee who has a sex crime or violent crime until one-third (1/3) of the remaining time from the parole release date to the maximum expiration date has been served on parole; or until five (5) years have been served on parole on a life sentence for any crime. (3-23-98)

iii. A parole officer or other designated agent may petition the commission to consider an early discharge. (3-23-98)

iv. Any decision by the commission to grant an early discharge will not be effective until the official discharge document has been signed by the executive director or a commissioner. (3-23-98)

v. If a decision has been made by the commission to grant an early discharge, and adverse information is received that was not previously available, the document will not be signed and the discharge will not be effective. (3-23-98)

vi. The executive director may issue a commission warrant based upon the new information and the

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discharge grant will automatically be voided without further action by the commission. (3-23-98)

vii. If the executive director does not issue a warrant, the information will be referred to the commission for reconsideration. (3-23-98)

c. If the parolee is incapacitated, the commission may consider and/or grant an early discharge after one (1) year for any crime. (3-30-01)

10. Detainers. (3-23-98)

a. The commission may grant a parole to any county, state, or federal detainer which has been lodged against an inmate. (3-23-98)

i. While in the custody of the detaining jurisdiction, the parolee is subject to all rules of the housing facility and must submit monthly reports to commission staff or others as designated. (3-23-98)

ii. If the parolee is released from custody by the detaining jurisdiction, the parolee must contact the commission office immediately and must report to the nearest probation and parole office within five (5) days of release or as otherwise instructed by the commission staff. (3-23-98)

iii. If the parolee is released from custody by the detaining jurisdiction, the parolee must abide by all regular rules of parole and any special conditions ordered by the commission. (3-23-98)

b. The commission may grant a parole to a federal immigration detainer in order that the inmate may be deported to the country of citizenship. (3-23-98)

i. If the parolee is granted a release on bond or it is determined by the federal authorities that the parolee can remain in the United States, the parolee must contact the commission office immediately and must contact the nearest probation and parole office within five (5) days of release or as otherwise instructed by the commission staff. (3-23-98)

ii. If the parolee is deported from the United States to the country of citizenship, the parolee is not to return to the United States; any such return to the United States during the parole period and after deportation, is considered a violation of the parole contract. (3-23-98)

iii. The commission considers this type of parole grant an unsupervised parole, but the parolee is not obligated to submit monthly reports nor maintain contact with the commission as long as he remains outside of the United States. (3-23-98)

11. Special Progress Reports. A special progress report may be submitted by field supervision personnel to request modification of a special condition of parole, advise of problems that have developed, or to request interstate transfer of a case. (3-23-98)

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